

**NOTICE OF MEETING
OF THE
CITY OF DIBOLL CITY COUNCIL**

The City Council of the City of Diboll has called a Special Meeting in the City Hall Council Chambers, located at 400 Kenley Street, Diboll, Texas, on Tuesday, June 21, 2021 at 5:15 pm.

Call to Order

Invocation

Pledge of Allegiance

CITIZENS PRESENTATION: (Limited to 3 minutes)

This item provides the opportunity to address the City Council on any matter whether or not it is posted on the agenda. However, in accordance with the Texas Open Meetings Act, Section 551.041, the Council cannot discuss, deliberate, or take any action on matters not listed on the agenda. At this time, the Council will receive citizen comments, and if necessary, may refer the matter to City staff for research, resolution, or referral to Council on a future agenda.

Item #1: Consideration and possible action to approve the Guaranteed Energy Savings Performance Contract with Performance Services Inc. (PSI) in accordance with Texas Local Government Code 302.001 and TIPS Contract number 170103.

Adjournment

Note: Mayor and Council Reports on Items of Community Interest- Pursuant to Texas Government Code Section 551.0415 the City Council may report on the following items (1) expression of thanks, congratulations, or condolences; (2) information about holiday schedules; (3) recognition of individuals; (4) reminders about upcoming City Council events; (5) information about community events; (6) announcements involving imminent threat to public health and safety.

I certify that this Notice of Meeting was posted in a glass-enclosed case in front of City Hall at 400 Kenley Street, Diboll, Texas, and available for viewing by the public prior to 5:15 p.m. on June 17, 2022, as well as at the City's website.



Rosa M. Olvera - City Secretary

Posted: 6/17/2022



RESOLUTION 2022-06-001

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DIBOLL, TEXAS, AUTHORIZING THE CITY TO ENTER INTO AN INSTALLATION CONTRACT RELATING TO THE ACQUISITION AND INSTALLATION OF ENERGY SAVINGS IMPROVEMENTS, AND TO ENTER INTO A PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT WITH FIRST SECURITY FINANCE, INC. TO FINANCE THE COSTS THEREOF; AND APPROVING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Diboll, Texas (the “City”) is a political subdivision duly organized under the constitution and laws of the State of Texas; and

WHEREAS, it is hereby determined that a true and real need exists for the acquisition and installation of equipment for an energy conservation project, including (a) heating, ventilation and air conditioning upgrades, LED lighting, building automation system upgrades and siding and roof upgrades at certain of the City’s facilities, and (b) replacement of water meters and related infrastructure improvements at various locations throughout the City and other areas served by the City’s water department (the “Project”), as identified in the herein-after defined Installation Contract entered into between the City and Performance Services, Inc.; and

WHEREAS, the City is authorized under the Constitution and laws of the State of Texas (the “State”) to enter into a public property finance act lease purchase agreement to finance the acquisition and installation of the Project; and

WHEREAS, in order to accomplish the foregoing, it is necessary and desirable for the City to enter into the following documents:

1. Installation Contract with Performance Services, Inc. (the “Contract”) relating to the acquisition and installation of the Project;
2. Public Property Finance Act Lease Purchase Agreement (the “Agreement”) with First Security Finance, Inc., as lessor (the “Lessor”), for the purposes described therein, including to provide financing for the Project;
3. Escrow Agreement (the “Escrow Agreement”), with the Lessor and the escrow agent named therein for the purpose of establishing an acquisition fund into which the Lessor will deposit an amount equal to the aggregate principal components of rental payments under the Agreement; and
4. Federal Tax Agreement (the “Tax Agreement”), setting forth certain representations, facts, expectations, terms and conditions relating to the use and investment of the proceeds of the Agreement in order to establish and maintain the exclusion of the interest portion of rental payments under the Agreement from gross income for federal income tax purposes and in order to provide guidance for complying with the arbitrage rebate provisions of the Internal Revenue Code upon the terms and conditions as set forth in the Tax Agreement.

(the Contract, the Agreement, the Escrow Agreement and the Tax Agreement are referred to herein as the “Transaction Documents”).

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF DIBOLL, TEXAS, AS FOLLOWS:

Section 1. The Transaction Documents are hereby approved in substantially the forms submitted to and reviewed by the City Council of the City on the date hereof, with such changes therein as are deemed necessary by the City's attorney and approved by the Mayor (or its designee), said officer's execution thereof to be conclusive evidence of the approval thereof. The Mayor is each hereby authorized and directed to execute and deliver the Transaction Documents on behalf of and as the act and deed of the City. The City Secretary is hereby authorized to affix the City's seal thereto and attest such as may be necessary.

Section 2. The City shall, and the officials and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this resolution and to carry out, comply with and perform the duties of the City with respect to the Transaction Documents and the acquisition and installation of the Project.

Section 3. The City has made certain capital expenditures in connection with the acquisition and installation of the Project prior to the date hereof, and the City expects to make additional capital expenditures in connection with the acquisition and installation thereof in the future. The City intends to reimburse itself for all or a portion of such expenditures, to the extent permitted by law, with the proceeds of the Agreement or other tax-exempt obligations to be delivered by the City. The maximum principal amount of the Agreement or other tax-exempt obligations expected to be delivered for the Project is not expected to exceed \$5,615,000.

Section 4. This resolution will take effect and be in full force from and after its adoption by the City Council of the City.

PASSED by the City Council of the City of Diboll, Texas this 21st day of June, 2022.

CITY OF DIBOLL, TEXAS

Trey Wilkerson, Mayor

ATTEST:

Rosa M. Olvera, City Secretary

STATE OF TEXAS §
ANGELINA COUNTY §
CITY OF DIBOLL §

\$5,606,325

**PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT
DATED AS OF JUNE 28, 2022, BETWEEN
FIRST SECURITY FINANCE, INC., AS LESSOR, AND THE
CITY OF DIBOLL, TEXAS, AS LESSEE**

CLOSING DATE: JUNE 28, 2022

LIST OF CLOSING DOCUMENTS

**Document
Number**

1. Public Property Finance Act Lease Purchase Agreement, with the following exhibits attached:
 - Exhibit A: Description of the Personal Property.
 - Exhibit B: Payment Schedule.
2. Escrow Agreement, with the following exhibits attached:
 - Exhibit A: Form of Payment Request and Acceptance Certificate.
 - Exhibit B: Final Acceptance Certificate.
3. Federal Tax Agreement, with the following exhibits attached:
 - Exhibit A: Amortization Schedule and Calculation of Weighted Average Maturity and Yield on the Lease Agreement.
 - Exhibit B: IRS Form 8038-G, together with proof of filing.
 - Exhibit C: Description of Personal Property Expected to Comprise Financed Assets and Benefitted Facilities.
 - Exhibit D: Sample Annual Compliance Checklist.
4. Lessee's Closing Certificate, with evidence of authorization from Lessee's governing body attached
5. Essential Use Certificate.
6. Opinion of Lessee's Counsel (validity opinion).
7. Opinion of Special Counsel to Lessor (tax opinion).
8. Issue Price Certificate from Lessor.
9. Installation Contract; Third Party Review Letter.
10. Evidence of Insurance.
11. Payment and Performance Bonds, together with Dual Obligees Rider naming Lessor and its successors and assigns as an additional obligee.

**Document
Number**

12. UCC Search Results.
13. UCC-1 Financing Statement respecting the Personal Property.
14. Lessee's Form W-9.
15. Texas Ethics Commission 1295 Filings:
 - A. Respecting the Installation Contract (filed by the Vendor).
 - B. Respecting the Public Property Finance Act Lease Purchase Agreement (filed by the Lessor).
16. Funding Memorandum.

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PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT

THIS PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT (the “Agreement”), is dated as of June 28, 2022, between **FIRST SECURITY FINANCE, INC.**, a corporation organized and existing under the laws of the State of Arkansas, as Lessor (“Lessor”), and the **CITY OF DIBOLL, TEXAS**, a body corporate and politic and political subdivision existing under the laws of the State of Texas, as Lessee (“Lessee”), wherein the parties hereby agree as follows:

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

“**Act**” means Section 271.005 of the Local Government Code, as amended.

“**Agreement**” means this Public Property Finance Act Lease Purchase Agreement and any other schedule, exhibit or escrow agreement made a part hereof by the parties hereto, together with any amendments to this Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**Commencement Date**” is the date when the term of this Agreement and Lessee’s obligation to pay rent commences, which date will be the earlier of (i) the date on which the Personal Property is accepted by Lessee in the manner described in **Section 13**, or (ii) the date on which sufficient moneys to purchase the Personal Property are deposited for that purpose with an escrow agent.

“**Event of Default**” means an Event of Default described in **Section 35**.

“**Issuance Year**” is the calendar year in which the Commencement Date occurs.

“**Lease Term**” means the period from the Commencement Date until the last Rental Payment Date.

“**Lessee**” means the entity described as such in the first paragraph of this Agreement, its successors and its assigns.

“**Lessor**” means the entity described as such in the first paragraph of this Agreement, its successors and its assigns.

“**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.

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

“**Personal Property**” means the property described on the Personal Property Schedule attached hereto as **Exhibit A**, and all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto, and all insurance and/or proceeds therefrom.

“**Purchase Price**” means the amount set forth on the Payment Schedule that Lessee may, at its option, pay to Lessor to purchase the Personal Property.

“**Rental Payment Dates**” means the dates set forth on the Payment Schedule on which Rental Payments are due.

“**Rental Payments**” means the basic rental payments payable by Lessee pursuant to **Section 9**.

“**State**” means the State of Texas.

“**Vendor**” means the manufacturer of the Personal Property as well as the agents or dealers of the manufacturer from whom the Personal Property is or has been purchased, as listed on **Exhibit A**.

Section 2. Representations and Covenants of Lessee. Lessee represents, warrants and covenants for the benefit of Lessor as follows:

- (a) Lessee is a body corporate and politic and political subdivision duly organized and existing under the constitution and laws of the State and constitutes a “governmental agency” under the Act. Lessee will do or cause to be done all things to preserve and keep in full force and effect its existence as a political subdivision. Lessee has a substantial amount of one or more of the following sovereign powers: (i) the power to tax, (ii) the power of eminent domain, and (iii) police power.
- (b) Lessee is authorized under the constitution and laws of the State, including the Act, to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.
- (c) Lessee has been duly authorized to execute and deliver this Agreement by proper action and approval of its governing body at a meeting duly called, regularly convened and attended throughout by a requisite majority of the members thereof or by other appropriate official approval.
- (d) This Agreement constitutes the legal, valid and binding obligation of Lessee 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) Lessee has complied with such public bidding requirements and laws and regulations, including the Act, as may be applicable to this Agreement and the acquisition by Lessee of the Personal Property hereunder.
- (g) 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 Lessee, nor to the best knowledge of Lessee 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, operations or properties of Lessee.
- (h) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement or in connection with the carrying out by Lessee of its obligations hereunder have been obtained.
- (i) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to Lessee 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 Lessee or the Personal Property pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.
- (j) The Personal Property described in this Agreement is essential to the function of Lessee or to the service Lessee provides to its citizens. Lessee has an immediate need for, and expects to make immediate use of, substantially all the Personal Property, which need is not temporary or expected to diminish in the foreseeable future. The Personal Property will be used by Lessee only for the purpose of performing one or more of Lessee’s governmental or proprietary functions consistent with the permissible scope of Lessee’s authority.
- (k) Neither the payment of the Rental Payments hereunder nor any portion thereof is (i) secured by any interest in property used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code) or in payments in respect of such property or (ii) derived from payments in respect of property, or borrowed money, used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code). No portion of the Personal Property will be used directly or indirectly in any trade or business carried on by any non-exempt person (within the meaning of Section 103 of the Code).

(l) Lessee will comply with all applicable provisions of the Code, including without limitation Sections 103 and 148 thereof, and the applicable regulations of the Treasury Department to maintain the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation.

(m) Lessee will use the proceeds of this Agreement as soon as practicable and with all reasonable dispatch for the purpose for which this Agreement has been entered into. No part of the proceeds of this Agreement will be invested in any securities, obligations or other investments or used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of the execution and delivery of this Agreement, would have caused any portion of this Agreement to be or become an "arbitrage bond" within the meaning of Section 103(b)(2) or Section 148 of the Code and the applicable regulations of the Treasury Department.

(n) Lessee has never failed to pay payments coming due under any bond issue, contract, lease purchase agreement or other indebtedness obligation of Lessee, whether secured by Lessee's ad valorem taxes or otherwise.

(o) The useful life of the Personal Property will not be less than the Lease Term.

(p) The application, statements and credit or financial information submitted by Lessee to Lessor are true and correct and made to induce Lessor to enter into this Agreement and the escrow agreement, and Lessee has experienced no material change in its financial condition since the date(s) of such information.

(q) Lessee's fiscal year is from October 1 to September 30. Lessee has provided Lessor with audited financial statements through September 30, 2020. Lessee has experienced no material change in its financial condition or in the revenues expected to be utilized to meet Rental Payments due under this Agreement since September 30, 2020.

(r) Lessee shall pay the excess (if any) of the actual costs of acquiring the Personal Property under this Agreement over the amount deposited by Lessor in the acquisition fund established under the related escrow agreement and interest earnings thereon.

(s) Lessee is the fee owner of the real estate where the Personal Property is and will be located and has good and marketable title thereto, and there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such real estate. The Personal Property is not a replacement, repair, substitution or proceeds of any equipment or personal property subject to a prior lien or security interest of a third party.

(t) Lessee hereby confirms that this Agreement is a written contract stating the essential terms of an agreement for providing goods or services to Lessee under Section 271.151(2) of the Texas Local Government Code, and this Agreement is a waiver of Lessee's governmental immunity from suit under this Agreement, but only to the extent permitted under Section 271.153, Texas Government Code.

Section 3. Certification as to Arbitrage. Lessee hereby represents as follows:

(a) The estimated total costs of the Personal Property, together with any costs of entering into this Agreement and capitalized interest coming due during the acquisition period to be financed under this Agreement, will not be less than the total principal portion of the Rental Payments.

(b) The Personal Property has been ordered or is expected to be ordered within six months of the Commencement Date, and the Personal Property is expected to be delivered and installed, and the Vendor fully paid, within twenty-four months of the Commencement Date.

(c) Other than the Payment Fund (defined herein), Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments.

(d) The Personal Property has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments.

(e) To the best of our knowledge, information and belief, the above expectations are reasonable.

Section 4. Lease of Personal Property. Lessor hereby demises, leases and lets the Personal Property to Lessee, and Lessee rents, leases and hires the Personal Property from Lessor, in accordance with the provisions of this Agreement, for the Lease Term.

Section 5. Tax Levy. During each year of the Lease Term, Lessee shall compute and ascertain, as a part of Lessee's maintenance tax, a rate and amount of ad valorem tax which will be sufficient to raise and produce the money required (i) to pay the interest component of each Rental Payment as such interest comes due and (ii) to pay the principal component of each Rental Payment as such principal becomes due. Such tax shall be based on the latest approved tax rolls of Lessee, with full allowance being made for tax delinquencies and the cost of tax collection. Such rate and amount of ad valorem tax is hereby levied out of the maintenance tax of Lessee and ordered to be levied against all taxable property within the boundaries of Lessee for each year of the Lease Term; and such tax shall be assessed and collected during each such year. Such ad valorem taxes sufficient to provide for the payment of the Rental Payments, as they become due, are hereby pledged irrevocably from the maintenance tax of Lessee for such payment, within the limits prescribed by law.

Section 6. Termination of Lease Term. The Lease Term will terminate upon the earliest of any of the following events:

- (a) the exercise by Lessee of the option to purchase the Personal Property under the provisions of **Section 31** and payment of the Purchase Price and all amounts payable in connection therewith;
- (b) a default by Lessee and Lessor's election to terminate this Agreement under **Section 36**; or
- (c) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder during the Lease Term and the payment of all other amounts required to be paid hereunder.

Section 7. Levy of Taxes; Budgeting. During the Lease Term, Lessee covenants that prior to adopting a budget for any ensuing fiscal year Lessee shall place in its proposed budget for such ensuing fiscal year an amount necessary to pay the Rental Payments and all other amounts payable hereunder for such ensuing fiscal year and that the final budget for each fiscal year shall set aside and appropriate out of revenues generated from Lessee's operation and maintenance tax levy under Article XI, Section 4, Texas Constitution (the "Limited Tax") revenues and other revenues and funds lawfully available therefor an amount sufficient to pay the Rental Payments and all other amounts payable hereunder and shall deposit all such funds in accordance with **Section 8**. Lessee hereby levies and agrees to assess and collect, a continuing direct annual Limited Tax on all taxable property within the boundaries of Lessee, within the limitations prescribed by law, at a rate from year to year sufficient, together with such other revenues and funds lawfully available to Lessee for the payment of Rental Payments and all other amounts payable hereunder, to provide funds each year to pay the Rental Payments and all other amounts payable hereunder, full allowance being made for delinquencies and costs of collection. The Limited Tax and such revenues and funds in an amount sufficient to pay Rental Payments and all other amounts payable hereunder are pledged to Lessor for such purpose as the same shall become due and payable under this Agreement.

Section 8. Deposit into the Payment Fund.

- (a) On or before the Commencement Date, Lessee shall establish a payment fund (the "Payment Fund"), which shall be maintained by Lessee as long as any Rental Payments are unpaid. Lessee hereby pledges the Payment Fund for the exclusive purpose of securing the Rental Payments and shall apply the funds therein to the payment of Rental Payments as such payments come due.
- (b) Each year in which Rental Payments come due, Lessee shall, not later than the day preceding any such due date, deposit into the Payment Fund, from Lessee's Limited Tax or other lawfully available funds (within the limits prescribed by law) an amount sufficient to make such payment. Lessee hereby pledges its Limited Tax as security for this obligation.

(c) The Payment Fund shall be depleted at least once a year except for a carryover amount not to exceed one twelfth (1/12) of the amount of the Rental Payments expected to come due in the following year.

Section 9. Rental Payments. Lessee will pay Rental Payments, exclusively from the Limited Tax and legally available funds, in lawful money of the United States of America to Lessor in the amounts and on the dates set forth on the Payment Schedule. Rental Payments will be in consideration for Lessee's use of the Personal Property during the fiscal year in which such payments are due. Any Rental 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 law, including Section 1204.006 of the Texas Government Code, as amended, whichever is less, from its due date (the "Default Rate Amount").

In the event that it is determined that any of the interest components of Rental Payments may not be excluded from Lessor's gross income for purposes of federal income taxation, Lessee agrees to pay to Lessor promptly after any such determination and on each Rental Payment Date thereafter an additional amount determined by Lessor to compensate Lessor for the loss of such excludability (including without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive absent manifest error (the "Event of Taxability Amounts").

Section 10. Interest Component. As set forth on the Payment Schedule, a portion of each Rental Payment is paid as, and represents payment of, interest.

Section 11. Rental Payments To Be Unconditional. The obligations of Lessee to pledge, levy and collect the Limited Tax, to make Rental 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 Personal Property to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the Personal Property or any accident, condemnation or unforeseen circumstances or the failure of Lessor or any other person or entity to perform its obligations under this Agreement or any other agreement, including the performance guaranty.

Section 12. [Reserved].

Section 13. Delivery, Installation and Acceptance of the Personal Property. Lessee will order the Personal Property, cause the Personal Property 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 Personal Property has been delivered and installed, Lessee will immediately accept the Personal Property and evidence said acceptance by executing and delivering to Lessor a certificate of acceptance and payment request in substantially the form attached to the related escrow agreement, in form and substance acceptable to Lessor. After it has been delivered and installed, the Personal Property will not be moved from the locations specified on **Exhibit A** without Lessor's consent, which consent will not be unreasonably withheld.

Section 14. Enjoyment of Personal Property. Lessor hereby covenants to provide Lessee with quiet use and enjoyment of the Personal Property during the Lease Term, and Lessee will peaceably and quietly have and hold and enjoy the Personal Property during the Lease Term, without suit, trouble or hindrance from Lessor, except as otherwise expressly set forth in this Agreement. In the event Lessor fails to comply with this covenant or any other covenant made by Lessor under this Agreement (if any) and Lessee shall not be in default under this Agreement, Lessee may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement.

Section 15. Right of Inspection. Lessor will have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting the Personal Property.

Section 16. Use of the Personal Property. Lessee will not install, use, operate or maintain the Personal Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee will obtain all permits and licenses, if any, necessary for the installation and operation of the Personal Property. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Personal Property) with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; provided, however, that Lessee 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 Lessor, adversely affect the interest of Lessor in and to the Personal Property or its interest or rights under this Agreement.

Section 17. Maintenance of Personal Property. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Personal Property in good repair, working order and condition. Lessor will have no responsibility to maintain, or repair or to make improvements or additions to the Personal Property. If requested to do so by Lessor, Lessee will enter into a maintenance contract for the Personal Property with Vendor.

Section 18. Title to the Personal Property. During the Lease Term, title to the Personal Property and any and all additions, repairs, replacements or modifications will vest in Lessee, subject to the rights of Lessor under this Agreement; provided that title will thereafter immediately and without any action by Lessee vest in Lessor, and Lessee will immediately surrender possession of the Personal Property to Lessor upon (a) any termination of this Agreement other than termination pursuant to **Section 31** or **Section 6(c)** or (b) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section will occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee will, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer. Lessee irrevocably designates, makes, constitutes and appoints Lessor and its assignee as Lessee's true and lawful attorney (and agent in-fact) with power, at such time of termination or times thereafter as Lessor in its sole and absolute discretion may determine, in Lessee's or Lessor's or such assignee's name, to endorse the name of Lessee upon any bill of sale, document, instrument, invoice, freight bill, bill of lading or similar document relating to the Personal Property in order to vest title in Lessor and transfer possession to Lessor.

Section 19. Security Interest. To secure the payment of all of Lessee's obligations under this Agreement and to the extent permitted by law, Lessor retains a security interest constituting a first lien on the Personal Property, and on all additions, attachments and accessions thereto and substitutions therefor and proceeds therefrom. Lessee agrees to execute such additional documents in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest. Lessee agrees that financing statements may be filed with respect to the security interest in the Personal Property.

As further security therefor, Lessee grants to Lessor a first priority security interest in the cash and negotiable instruments from time to time comprising the acquisition fund, if any, established under any related escrow agreement and all proceeds (cash and non-cash) thereof, and agrees with respect thereto that Lessor shall have all the rights and remedies of a secured party.

Section 20. Personal Property; No Encumbrances. Lessor and Lessee agree that the Personal Property is and will remain personal property. The Personal Property will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Personal Property 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 Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Personal Property from any party having an interest in any such real estate or building. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Personal Property is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; provided, that if Lessor or its assigns is furnished with a waiver of interest in the Personal Property acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not unreasonably withheld.

Section 21. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee will keep the Personal Property free and clear of all liens, charges and encumbrances, except those created under this Agreement. The parties to this Agreement contemplate that the Personal Property will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Personal Property will be exempt from all property taxes and other similar charges. If the use, possession or acquisition of the Personal Property is found to be subject to taxation in any form, Lessee will pay all taxes and governmental charges lawfully assessed or levied against or with respect to the Personal Property. Lessee will pay all utility and other charges incurred in the use and maintenance of the Personal Property. Lessee 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, Lessee will be obligated to pay only such installments that

accrue during the Lease Term. This Agreement is intended to be a “net-net-net contract” and Lessee hereby agrees that the Rental Payments are an absolute net return to Lessor, free and clear of any expenses, charges or set-offs whatsoever.

Section 22. Insurance. At its own expense, Lessee will maintain (a) casualty insurance insuring the Personal Property 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 Lessor in an amount at least equal to the then applicable Purchase Price of the Personal Property, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor, and (c) workers’ compensation coverage as required by the laws of the State; provided that, with Lessor’s prior written consent, Lessee may self-insure against the risks described in clauses (a) and (b). Lessee shall also provide or cause to be provided to Lessor payment and performance bonds, each naming Lessor and its successors and assigns as an additional obligee and issued by a surety company rated “A” or better by AM Best in an amount equal to the Personal Property. All insurance proceeds from casualty losses will be payable as hereinafter provided. Lessee will furnish to Lessor certificates evidencing such coverage throughout the Lease Term.

All such casualty and liability insurance will be with insurers that are acceptable to Lessor, will name Lessor and its successors and assigns 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 Lessor at least ten days in advance of such cancellation or modification. All such casualty insurance will contain a provision making any losses payable to Lessee and Lessor, as their respective interests may appear.

Section 23. Advances. In the event Lessee 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 Personal Property in good repair and operating condition, Lessor may (but will be under no obligation to) purchase the required policies of insurance and pay the cost of the premiums thereof, pay such taxes and charges and make such Personal Property repairs or replacements as are necessary and pay the cost thereof. All amounts so advanced by Lessor will become additional rent made by Lessee under this Agreement. Lessee agrees to pay such amounts with interest thereon from the date paid at the rate of 10% per annum or the maximum permitted by law, whichever is less.

Section 24. Financial Information. Upon request, Lessee shall furnish or cause to be furnished to Lessor, at Lessee’s expense, as soon as available after the close of each fiscal year, the audited financial statement of Lessee at the close of and for such fiscal year, all in reasonable detail, with supporting schedules, audited by and with the report of Lessee’s auditor (the “Audit”), which may be in electronic .pdf format. In the event the Audit is filed on the MSRB’s “EMMA” website, to satisfy this requirement Lessee may email a link to the posted Audit to Lessor. In the event that the Audit is not available, Lessee will furnish unaudited financial statements to Lessor in the manner described in this Section, and will then supply the Audit immediately upon the availability thereof. Lessee will provide Lessor with any reasonably required financial or other information in a reasonable time following Lessor’s written request.

Section 25. Release and Indemnification. To the extent permitted by law, Lessee will indemnify, protect and hold harmless Lessor 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 by Lessee, (b) the ownership of any item of the Personal Property, (c) the manufacturing, ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Personal Property, (d) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Personal Property 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, unless said breach of covenant or misrepresentation is made by Lessor. 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 Lease Term for any reason.

Section 26. Risk of Loss. Lessee assumes, from and including the Commencement Date, all risk of loss of or damage to the Personal Property from any cause whatsoever. No such loss of or damage to the Personal Property nor defect therein nor unfitness or obsolescence thereof will relieve Lessee of the obligation to make Rental Payments or to perform any other obligation under this Agreement.

Section 27. Damage, Destruction, Condemnation; Use of Proceeds. If (a) the Personal Property 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 Personal Property or any part thereof or the interest of Lessee or Lessor in the Personal Property 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, Lessee and Lessor 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 Personal Property, unless Lessee has exercised its option to purchase the Personal Property pursuant to **Section 31**. Any balance of the Net Proceeds remaining after such work has been completed will be paid to Lessee.

Section 28. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in **Section 27**, Lessee 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 Lessor's interest in the Personal Property pursuant to **Section 31**. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing the Personal Property will be retained by Lessee. If Lessee will make any payments pursuant to this Section, Lessee will not be entitled to any reimbursement therefor from Lessor nor will Lessee be entitled to any diminution of the amounts payable under **Section 9** or any other Section of this Agreement.

Section 29. Disclaimer of Warranties. *LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE OF THE PERSONAL PROPERTY OR AGAINST INFRINGEMENT, OR ANY OTHER WARRANTY OR REPRESENTATION WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR 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 LESSEE'S USE OR MAINTENANCE OF ANY PERSONAL PROPERTY OR SERVICES PROVIDED FOR IN THIS AGREEMENT.*

Section 30. Vendor's Warranties. Lessee may have rights under the contract evidencing the purchase of the Personal Property; Lessee is advised to contact the Vendor for a description of any such rights. Lessee hereby assigns to Lessor during the Lease Term all warranties running from Vendor to Lessee. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee will not be in default hereunder, to assert from time to time whatever claims and rights (including without limitation warranties) related to the Personal Property that Lessor may have against the Vendor. Lessee's sole remedy for the breach of any such warranty, indemnification or representation will be against the Vendor, and not against Lessor. Any such matter will not have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or availability of such warranties by the Vendor.

Section 31. Purchase Option; Prepayment.

(a) Lessee will have the option to purchase the Personal Property, upon giving written notice to Lessor at least 30 days before the date of purchase, at the following times and upon the following terms:

(i) On June 1, 2031, and any Rental Payment Date thereafter, upon payment in full of the Rental Payment then due hereunder plus all other amounts due hereunder plus the then-applicable Purchase Price to Lessor; or

(ii) In the event of substantial damage to or destruction or condemnation (other than by Lessee or any entity controlled by or otherwise affiliated with Lessee) of substantially all of the Personal Property, on the day Lessee specifies as the purchase date in Lessee's notice to Lessor of its exercise of the purchase option, upon payment in full of the Rental Payment and all other amounts then due hereunder plus (A) the Purchase Price designated on the Payment Schedule for such purchase date if such purchase date is a Rental Payment Date or the Purchase Price for the immediately preceding Rental Payment Date if such purchase date is not a Rental Payment Date, and (B) if such day is not a Rental Payment Date, an amount equal to the portion of the interest component of the Rental Payment scheduled to come due on the following Rental Payment Date accrued from the immediately preceding Rental Payment Date to such purchase date, computed on the basis of a 360-day year of twelve 30-day months. In

the event there is no applicable Purchase Price set forth in the Payment Schedule, the Purchase Price for any such prepayment set forth in (A) or (B) above shall be in an amount equal to 102% of the outstanding principal balance of this Agreement.

On the final Rental Payment Date, Lessee will be deemed to have exercised its option to purchase the Personal Property subject to this Agreement, without requirement for written notice, upon payment in full of the Rental Payments then due hereunder, plus all other amounts due hereunder and not yet paid.

Upon the exercise of the option to purchase set forth above, title to the Personal Property will be vested in Lessee, free and clear of any right or claim by or through Lessor.

(b) In the event monies remain in any acquisition fund established under an escrow agreement, upon receipt by the escrow agent under such escrow agreement of a duly executed certificate of acceptance and payment request identified as the final such request, the remaining monies in such acquisition fund shall, first be applied to all reasonable fees and expenses incurred by such escrow agent, if applicable, in connection with such acquisition fund as evidenced by its statement forwarded to Lessor and Lessee; and, second be paid to Lessor, to be applied by Lessor on any Rental Payment Date to all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing hereunder in inverse order of Rental Payment Dates, unless Lessor directs that payment of such amount be made in such other manner that, in the opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor, will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes. If any such amount is applied against the outstanding principal components of Rental Payments, the Payment Schedule attached hereto will be revised accordingly.

Section 32. Determination of Fair Purchase Price. Lessee and Lessor hereby agree and determine that the Rental Payments hereunder represent the fair value of the use of the Personal Property and that the amount required to exercise Lessee's option to purchase the Personal Property pursuant to **Section 31** represents, as of the end of the Lease Term, the fair purchase price of the Personal Property. In making such determinations, Lessee and Lessor have given consideration to (a) the costs of the Personal Property, (b) the uses and purposes for which the Personal Property will be employed by Lessee, (c) the benefit to Lessee by reason of the acquisition and installation of the Personal Property and the use of the Personal Property pursuant to the terms and provisions of this Agreement, and (d) Lessee's option to purchase the Personal Property. Lessee hereby determines and declares that the acquisition and installation of the Personal Property and the leasing of the Personal Property pursuant to this Agreement will result in personal property of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition and installation of the Personal Property were performed by Lessee other than pursuant to this Agreement. Lessee hereby determines and declares that the Lease Term does not exceed the useful life of the Personal Property.

Section 33. Assignment by Lessor.

(a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the related escrow agreement, its security interest in the Personal Property and any acquisition fund, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law. Nothing in this Section 33 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust. Notwithstanding the foregoing, any certificates of participation may be sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represents that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment, (ii) such purchaser understands that neither this Agreement nor certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933.

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank or trust company as trustee or paying agent. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or the Vendor but shall have the right to bring such claim against the Vendor notwithstanding assignment of Lessor's interest as authorized in this Section. Assignments in part may include without limitation assignment of all of Lessor's security interest in and to the Personal Property and all rights in, to and under this Agreement related to such Personal Property, and all of Lessor's security interest in and to any acquisition fund, or all rights in, to and under the related escrow agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a notice of assignment in substantially the form provided by Lessor, within five (5) business days after its receipt of such request.

Section 34. Assignment and Subleasing by Lessee. None of Lessee's right, title and interest in, to and under this Agreement and the Personal Property may be assigned or encumbered by Lessee for any reason, except that Lessee may sublease all or part of the Personal Property if Lessee obtains the prior written consent of Lessor and an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments from gross income for federal income tax purposes. Any such sublease of all or part of the Personal Property will be subject to this Agreement and the rights of Lessor in, to and under this Agreement and the Personal Property.

Section 35. Events of Default Defined. Any of the following will be "Events of Default" under this Agreement:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in **Section 35(a)**, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to Lessee by Lessor, unless Lessor 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, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee 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;

(d) Any provision of this Agreement will at any time for any reason cease to be valid and binding on Lessee, or will be declared to be null and void, or the validity or enforceability thereof will be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee will deny that it has any further liability or obligation under this Agreement;

(e) Lessee will (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (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 Lessee in any bankruptcy, reorganization or insolvency proceeding; or

(f) 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 Lessee or of all or a substantial part of the assets of Lessee, 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 36. Remedies on Default. Whenever any Event of Default exists, Lessor 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 Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee hereunder to the end of the Lease Term to be due;

(b) With or without terminating this Agreement, Lessor may enter the premises where the Personal Property is located and retake possession of the Personal Property or require Lessee at Lessee's expense to promptly return any or all of the Personal Property to the possession of Lessor at a place specified by Lessor, and sell or lease the Personal Property or, for the account of Lessee, sublease the Personal Property, holding Lessee liable for the difference between (i) the Rental Payments and other amounts payable by Lessee hereunder to the end of the Lease Term, plus the applicable Purchase Price, and (ii) the net proceeds of any such sale, lease or sublease (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation, all expenses of taking possession, storing, reconditioning and selling or leasing the Personal Property and all brokerage, auctioneers' and attorneys' fees); and

(c) Lessor may provide written notice of the occurrence of an Event of Default to the escrow agent under any related escrow agreement, and the escrow agent shall thereupon promptly remit to Lessor the entire balance of the acquisition fund established thereunder; and

(d) Lessor may take whatever other action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Personal Property, including, without limitation, seeking actions based on mandamus, specific performance/enforcement or related legal remedies.

In addition, Lessee 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 Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

Section 37. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor 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 Lessor 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 38. 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 Lessee.

Section 39. Binding Effect. This Agreement will inure to the benefit of and will be binding upon Lessor and Lessee and their respective successors and assigns.

Section 40. 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 41. Entire Agreement. This Agreement constitutes the entire agreement between Lessor and Lessee.

Section 42. Amendments. This Agreement may be amended, changed or modified in any manner by written agreement of Lessor and Lessee. 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 43. 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 44. 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 45. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State.

Section 46. 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 47. Role of Lessor. Lessor has not acted and will not act as a fiduciary for Lessee or as Lessee's agent or municipal advisor. Lessor has not and will not provide financial, legal, tax, accounting or other advice to Lessee or to any financial advisor or placement agent engaged by Lessee with respect to this Agreement. Lessee, 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).

Section 48. Lessee's Notice Filings Related to this Agreement for SEC Rule 15c2-12. In connection with Lessee's compliance with any continuing disclosure undertakings (each, a "Continuing Disclosure Agreement") entered into by Lessee on and after February 27, 2019, pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "Rule"), Lessor acknowledges that Lessee may be required to file with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, or its successor ("EMMA"), notice that Lessee has incurred obligations under this Agreement and notice of certain subsequent events reflecting financial difficulties in connection with this Agreement. Lessee agrees that it shall not file or submit, or permit to be filed or submitted, with EMMA any documentation that includes the following unredacted sensitive or confidential information about Lessor or its affiliates: address and account information of Lessor or its affiliate, e-mail addresses, telephone numbers, fax numbers, names and signatures of officers, employees and signatories of Lessor or its affiliates, or any account information for any related escrow agreement, unless otherwise required for compliance with the Rule or otherwise required by law. Lessee acknowledges that Lessor is not responsible for Lessee's compliance or noncompliance with the Rule or any Continuing Disclosure Agreement.

Section 49. No Engagement in Boycott of Israel. Lessee certifies that it does not boycott Israel, and agrees that it will not boycott Israel during the term of this Agreement, with the term "boycott" having the meaning assigned in V.T.C.A., Government Code §808.001.

Section 50. No Business with Iran, Sudan or Foreign Terrorist Organizations. Lessee certifies that it does not engage in business with Iran, Sudan, or any company identified on the list referenced in V.T.C.A., Government Code § 2252.152.

Section 51. No Engagement in Boycotting Oil Companies. Lessee certifies that it does not boycott oil companies and will not boycott oil companies during the term of this Agreement pursuant to V.T.C.A., Government Code § 2274 (Acts 2021, 87th Leg., ch. 529 § 2).

Section 52. No Discrimination against Firearm and Ammunition Industries. Lessee certifies that it (a) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of this Agreement against a firearm trade association, all pursuant to V.T.C.A., Government Code § 2274 (Acts 2021, 87th Leg., ch. 530 § 1).

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

FIRST SECURITY FINANCE, INC.

By: _____
Name: Mark Killingsworth
Title: Vice President
Address: First Security Center
521 President Clinton Ave., Ste. 800
Little Rock, AR 72201

CITY OF DIBOLL, TEXAS

By: _____
Name: Trey Wilkerson
Title: Mayor
Address: 400 Kenley Street
Diboll, TX 75941

CERTIFICATION

I, the undersigned, do hereby certify (i) that the officer of Lessee who executed the foregoing Agreement on behalf of Lessee and whose genuine signature appears thereon, is the duly qualified and acting officer of Lessee as stated beneath his or her signature and has been authorized to execute the foregoing Agreement on behalf of Lessee, and (ii) that the fiscal year of Lessee is from October 1 through September 30.

DATED: June 28, 2022.

By: _____
Name: Rosa Olvera
Title: City Secretary

EXHIBIT A TO PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT

PERSONAL PROPERTY SCHEDULE

Description of the Personal Property:

The Personal Property consists of all personal property acquired and installed in connection with the energy savings improvements as set forth in the Installation Contract dated as of June __, 2022, between the City of Diboll, Texas (the “City”), and Performance Services, Inc., including (a) heating, ventilation and air conditioning upgrades, LED lighting, building automation system upgrades and siding and roof upgrades at certain of Lessee’s facilities, and (b) replacement of water meters and related infrastructure at various locations throughout the City, and other areas served by the City’s water department, 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. See also “Project Improvement List” attached hereto. *[Project Improvements List from Installation Contract to be attached.]*

This description of the Personal Property shall be deemed to be supplemented and amended by the descriptions of the Personal Property included in the Payment Request and Acceptance Certificates submitted to Lessor for approval pursuant to the terms of the Escrow Agreement dated as of June 28, 2022, among Lessor, Lessee and Bank OZK, as escrow agent, which descriptions shall be deemed to be incorporated herein.

Vendor:

The Vendor is Performance Services, Inc., 801 E. Old Settlers Boulevard, Suite 100, Round Rock, Texas 78664.

EXHIBIT B TO PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT

PAYMENT SCHEDULE

Principal Amount: \$5,606,325

Interest Rate: 3.68%; 30/360 basis

Rental Payments will be made in accordance with **Section 9** and this Payment Schedule.

<u>Rental Payment Date</u>	<u>Total Rental Payment</u>	<u>Principal Portion</u>	<u>Interest Portion</u>	<u>Purchase Price*</u>
06/01/2023	\$ 190,839.30**	\$ 0.00	\$ 190,839.30	NPP
06/01/2024	369,302.76	162,990.00	206,312.76	NPP
06/01/2025	372,175.73	171,861.00	200,314.73	NPP
06/01/2026	377,937.24	183,947.00	193,990.24	NPP
06/01/2027	383,790.99	196,570.00	187,220.99	NPP
06/01/2028	389,738.22	209,751.00	179,987.22	NPP
06/01/2029	395,779.38	223,511.00	172,268.38	NPP
06/01/2030	401,917.18	237,874.00	164,043.18	NPP
06/01/2031	408,152.41	252,863.00	155,289.41	\$4,046,297.16
06/01/2032	414,487.05	268,503.00	145,984.05	3,772,424.10
06/01/2033	414,921.14	278,818.00	136,103.14	3,488,029.74
06/01/2034	414,920.64	289,078.00	125,842.64	3,193,170.18
06/01/2035	414,920.57	299,716.00	115,204.57	2,887,459.86
06/01/2036	414,921.02	310,746.00	104,175.02	2,570,498.94
06/01/2037	414,920.57	322,181.00	92,739.57	2,241,874.32
06/01/2038	414,921.31	334,038.00	80,883.31	1,901,155.56
06/01/2039	414,920.71	346,330.00	68,590.71	1,547,898.96
06/01/2040	414,920.77	359,075.00	55,845.77	1,181,642.46
06/01/2041	414,920.81	372,289.00	42,631.81	801,907.68
06/01/2042	414,921.57	385,990.00	28,931.57	408,197.88
06/01/2043	414,921.14	400,194.00	14,727.14	0.00
Totals	<u>\$8,268,250.51</u>	<u>\$5,606,325.00</u>	<u>\$2,661,925.51</u>	

CITY OF DIBOLL, TEXAS

By: _____
Name: Trey Wilkerson
Title: Mayor

* Lessee's option to purchase is subject to the provisions of Section 31 of the Agreement.

** The Total Rental Payment due on this Rental Payment Date will be paid when it becomes due by the Escrow Agent from moneys on deposit in the Acquisition Fund pursuant to the authorization set forth in the Escrow Agreement dated as of June 28, 2022, among Lessor, Lessee and Bank OZK, as escrow agent.

ESCROW AGREEMENT

This **ESCROW Agreement** (the “Escrow Agreement”), dated as of June 28, 2022, is entered into among **FIRST SECURITY FINANCE, INC.**, an Arkansas corporation (together with its successors and assigns, the “Lessor”), the **CITY OF DIBOLL, TEXAS**, a municipal corporation and political subdivision existing under the laws of Texas (the “Lessee”), and **BANK OZK**, an Arkansas state-chartered banking association, as escrow agent (together with its successors and assigns, the “Escrow Agent”).

Name of Acquisition Fund: “City of Diboll, Texas Acquisition Fund”

Amount of Deposit into the Acquisition Fund: \$5,606,325

TERMS AND CONDITIONS

1. This Escrow Agreement relates to and is hereby made a part of the Public Property Finance Act Lease Purchase Agreement dated as of June 28, 2022 (the “Agreement”), between the Lessor and the Lessee.

2. Except as otherwise defined herein, all terms defined in the Agreement will have the same meaning for the purposes of this Escrow Agreement as in the Agreement.

3. The Lessor, the Lessee and the Escrow Agent agree that the Escrow Agent will act as sole Escrow Agent under the Agreement and this Escrow Agreement, in accordance with the terms and conditions set forth in this Escrow Agreement. The Escrow Agent will not be deemed to be a party to the Agreement, and this Escrow Agreement will be deemed to constitute the entire agreement among the Lessor, the Lessee and the Escrow Agent.

4. There is hereby established in the custody of the Escrow Agent a special trust fund designated as set forth above (the “Acquisition Fund”) to be held and administered by the Escrow Agent in trust for the benefit of the Lessor and the Lessee in accordance with this Escrow Agreement.

5. The Lessor will deposit in the Acquisition Fund the amount specified above for the purpose of fully funding the Agreement and providing a mechanism for the application of such amounts to the purchase of and payment for (a) the Personal Property, including payment of capitalized interest on the date specified in **Section 7**, and (b) costs of issuance in connection with the Agreement. Moneys held by the Escrow Agent hereunder will be invested and reinvested by the Escrow Agent upon written order of an authorized representative of the Lessee, in accordance with the Lessee’s Federal Tax Agreement dated the date hereof in Qualified Investments (as defined below) maturing or subject to redemption at the option of the holder thereof prior to the date on which it is expected that such funds will be needed. If an authorized representative of the Lessee fails to timely direct the investment of any moneys held hereunder, the Escrow Agent will invest and reinvest such moneys in Qualified Investments described in **Section 6(vi)** below. Such investments will be held by the Escrow Agent in the Acquisition Fund; any interest and gain earned on such investments will be deposited in the Acquisition Fund, and any losses on such investments will be charged to the Acquisition Fund. The Escrow Agent may act as purchaser or agent in the making or disposing of any investment.

6. “Qualified Investments” means, to the extent the same are at the time legal for investment of the funds being invested: (i) direct general obligations of the United States of America; (ii) obligations the timely payment of principal of and interest on which is fully and unconditionally guaranteed by the United States of America; (iii) general obligations of the agencies and instrumentalities of the United States of America acceptable to the Lessor; (iv) certificates of deposit, time deposits or demand deposits with any bank or savings institution including the Escrow Agent or any affiliate thereof, provided that such certificates of deposit, time deposits or demand deposits, if not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, are fully secured by obligations described in (i), (ii) or (iii) above; or (v) repurchase agreements with any state or national bank or trust company, including the Escrow Agent or any affiliate thereof, that are secured by obligations of the type described in (i), (ii) or (iii) above, provided that such collateral is free and clear of claims of third parties and that the Escrow Agent or a third party acting solely as agent for the Escrow Agent has possession of such collateral and a perfected first security interest in such collateral; or (vi) money market mutual funds that are invested in securities described in (i), (ii) or (iii) and that are rated “Aaa” by Moody’s

Investors Service or “AAAm-G” by Standard & Poor’s Ratings Services or the comparable rating by Fitch IBCA, Inc.

7. Lessee and Lessor hereby authorize the Escrow Agent to take the following actions with respect to the Acquisition Fund:

a. Lessee and Lessor hereby authorize Escrow Agent to pay from the Acquisition Fund to Lessor interest on the Agreement as it becomes due representing capitalized interest from the date hereof, on the date and in the amount set forth below, without further action by Lessee, upon payment instructions provided by Lessor to Escrow Agent:

<u>Date</u>	<u>Amount</u>
06/01/2023	\$190,839.30

b. From time to time, the Escrow Agent shall pay from the Acquisition Fund to the Vendor, the Lessee or other payee, upon presentation to the Escrow Agent of a properly executed Payment Request and Acceptance Certificate, a form of which is attached as **Exhibit A**, executed by the Lessee and approved by the Lessor, together with an invoice for the cost of the acquisition of said Personal Property or cost of issuance, and a written approval by the Lessor of the Vendor to be paid. In making any disbursement pursuant to this **Section 7(b)**, the Escrow Agent may conclusively rely as to the completeness and accuracy of all statements in such Payment Request and Acceptance Certificate, and the Escrow Agent will not be required to make any inquiry, inspection or investigation in connection therewith. The approval of each Payment Request and Acceptance Certificate by the Lessor will constitute to the Escrow Agent an irrevocable determination by the Lessor that all conditions precedent to the payment of the amounts set forth therein have been completed. The Lessor shall not be required to approve any such payment unless and until the Lessee shall have provided to the Lessor (i) certificates of insurance evidencing coverage in accordance with Section 22 of the Agreement and satisfactory to the Lessor, and (ii) payment and performance bonds naming the Lessor and its successors and assigns as an additional obligee and issued by a surety company rated “A” or better by AM Best in form and substance satisfactory to the Lessor.

8. The Acquisition Fund will terminate upon the occurrence of the earlier of (a) the presentation of a proper Payment Request and Acceptance Certificate and the Final Acceptance Certificate, a form of which is attached as **Exhibit B**, properly executed by the Lessee, or (b) the presentation of written notification by the Lessor, or, if the Lessor has assigned its interest under the Agreement, then the assignees or subassignees of all of the Lessor’s interest under the Agreement or an agent on their behalf, that the Agreement has been terminated pursuant to the Agreement. Upon termination as described in clause (a) of this paragraph, any amount remaining in the Acquisition Fund shall, first be applied to all reasonable fees and expenses incurred by the Escrow Agent, if applicable, in connection with its acting as Escrow Agent hereunder as evidenced by its statement forwarded to the Lessor and the Lessee; and, second be paid to the Lessor, to be applied by the Lessor on any Rental Payment Date to all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by the Lessor as prepayment to the remaining principal balance owing under the Agreement in inverse order of Rental Payment Dates, unless the Lessor directs that payment of such amount be made in such other manner that, in the opinion of nationally recognized counsel in the area of tax-exempt municipal obligations satisfactory to the Lessor, will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes. If any such amount is applied against the outstanding principal components of Rental Payments, the Payment Schedule attached to the Agreement will be revised accordingly.

9. The Escrow Agent may at any time resign by giving at least 30 days’ written notice to the Lessee and the Lessor, but such resignation will not take effect until the appointment of a successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of the Lessor and the Lessee. In addition, the Escrow Agent may be removed at any time, with or without cause, by an instrument in writing executed by the Lessor and the Lessee. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent will be appointed by an instrument in writing executed by the Lessor and the Lessee. Such successor Escrow Agent will indicate its acceptance of such appointment by an instrument in writing delivered to the Lessor, the Lessee and the predecessor Escrow Agent. Thereupon such successor Escrow Agent will, without any further act or deed, be fully vested with all the trusts, powers, rights,

duties and obligations of the Escrow Agent under this Escrow Agreement and the predecessor Escrow Agent will deliver all moneys and securities held by it under this Escrow Agreement to such successor Escrow Agent whereupon the duties and obligations of the predecessor Escrow Agent will cease and terminate. If a successor Escrow Agent has not been so appointed within 90 days of such resignation or removal, the Escrow Agent may petition a court of competent jurisdiction to have a successor Escrow Agent appointed.

10. Any corporation or association into which the Escrow Agent may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, will be and become successor Escrow Agent hereunder and will be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

11. The Escrow Agent incurs no responsibility to make any disbursements pursuant to this Escrow Agreement except from funds held in the Acquisition Fund. The Escrow Agent makes no representations or warranties as to the title to any Personal Property listed in the Agreement or as to the performance of any obligations of the Lessor or the Lessee.

12. The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. The Escrow Agent will not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of this Escrow Agreement other than its own execution thereof or any instrument deposited with it, nor as to the identity, authority or right of any person executing the same; and its duties hereunder will be limited to those specifically provided herein.

13. Unless the Escrow Agent is guilty of negligence or willful misconduct with regard to its duties hereunder, the Lessee, to the extent permitted by law, hereby agrees to indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Escrow Agreement; and in connection therewith, to indemnify the Escrow Agent against any and all expenses, including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

14. The aggregate amount of the costs, fees, and expenses of the Escrow Agent in connection with the creation of the Acquisition Fund described in and created by this Escrow Agreement and in carrying out any of the duties, terms or provisions of this Escrow Agreement is a one-time fee in the amount of \$1,500, to be paid by the Lessee concurrently with the execution and delivery of this Escrow Agreement, from proceeds of the Agreement.

Notwithstanding the preceding paragraph, the Escrow Agent will be entitled to reimbursement from the Lessee of reasonable out-of-pocket, legal or extraordinary expenses incurred in carrying out the duties, terms or provisions of this Escrow Agreement. Claims for such reimbursement may be made to the Lessee and in no event will such reimbursement be made from funds held by the Escrow Agent pursuant to this Escrow Agreement. The Escrow Agent agrees that it will not assert any lien whatsoever on any of the money or Qualified Investments on deposit in the Acquisition Fund for the payment of fees and expenses for services rendered by the Escrow Agent under this Escrow Agreement or otherwise.

15. If the Lessee, the Lessor or the Escrow Agent are in disagreement about the interpretation of the Agreement or this Escrow Agreement, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but will not be required to, file an appropriate civil action to resolve the disagreement. The Escrow Agent will be indemnified by the Lessee, to the extent permitted by law, for all costs, including reasonable attorneys' fees and expenses, in connection with such civil action, and will be fully protected in suspending all or part of its activities under this Escrow Agreement until a final judgment in such action is received.

16. The Escrow Agent may consult with counsel of its own choice and will have full and complete authorization and protection for any action or non-action taken by the Escrow Agent in accordance with the opinion of such counsel. The Escrow Agent will otherwise not be liable for any mistakes of facts or errors of judgment, or for any acts or omissions of any kind unless caused by its negligence or willful misconduct.

17. All notices hereunder shall be in writing, sent by certified mail, return receipt requested, or by mutually recognized overnight carrier addressed to the other party at its respective address shown on the signature page of this Escrow Agreement or at such other address as such party shall from time to time designate in writing to the other parties, and shall be effective on the date of receipt.

18. This Escrow Agreement will be governed by and construed in accordance with the laws of the state in which the Escrow Agent is located.

19. In the event any provision of this Escrow 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.

20. This Escrow Agreement may not be amended except by a written instrument executed by the Lessor, the Lessee and the Escrow Agent.

21. This Escrow Agreement may be executed in several counterparts, each of which so executed will be an original.

22. 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.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the Lessor, the Lessee and the Escrow Agent have caused this Escrow Agreement to be executed by their duly authorized representatives.

FIRST SECURITY FINANCE, INC.

By: _____
Title: Vice President

Mailing Address: First Security Center
521 President Clinton Avenue, Suite 800
Little Rock, AR 72201

CITY OF DIBOLL, TEXAS

By: _____
Title: Mayor

Mailing Address: 400 Kenley Street
Diboll, TX 75941

BANK OZK, as Escrow Agent

By: _____
Title: Executive Vice President

Mailing Address: 18000 Cautrell Road
Little Rock, AR 72223

EXHIBIT A

FORM OF PAYMENT REQUEST AND ACCEPTANCE CERTIFICATE

To: Bank OZK, as Escrow Agent
18000 Cautrell Road
Little Rock, AR 72223

Re: City of Diboll, Texas Acquisition Fund established by the Escrow Agreement, dated as of June 28, 2022 (the "Escrow Agreement"), among First Security Finance, Inc. (the "Lessor"), the City of Diboll, Texas (the "Lessee"), and Bank OZK, as escrow agent (the "Escrow Agent")

Ladies and Gentlemen:

Bank OZK (the "Escrow Agent"), as escrow agent under that certain Escrow Agreement dated June 28, 2022 (the "Escrow Agreement"), by and among the City of Diboll, Texas (the "Lessee"), First Security Finance, Inc. or its assigns (the "Lessor") and the Escrow Agent, is hereby requested to pay from the Acquisition Fund established and maintained thereunder, the amount set forth below to the named payee(s). The amount shown is due and payable under a purchase order, contract or invoice (or has been paid by and not previously reimbursed to the Lessee). The personal property and costs described below are (i) part or all of the Personal Property listed in that certain Public Property Finance Act Lease Purchase Agreement dated as of June 28, 2022 (the "Agreement"), between the Lessor and the Lessee, including payment of capitalized interest during the acquisition period, or (ii) costs incurred in entering into the Agreement:

DESCRIPTION OF COST PAID OR FINANCING COST	AMOUNT	PAYEE
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The Lessee hereby certifies and represents to and agrees with the Lessor as follows with respect to the Personal Property described above: (i) the amount to be disbursed is not being paid in advance of the time, if any, fixed for any payment, and does not include any retained percentage entitled to be retained by the Lessee at this time; (ii) no amount requested to be disbursed was included in any payment request previously filed with the Escrow Agent for which payment was actually made by the Escrow Agent; (iii) the Lessee has made such investigation of such sources of information as are deemed necessary and is of the opinion that the applicable portion of the Personal Property and related work has been fully paid for, and no claim or claims exist against the Lessee or the Vendor out of which a lien based on furnishing labor or material exists or might arise; (iv) acquisition and installation of the applicable portion of the Personal Property for which payment is being requested has been completed in accordance with the terms and conditions of the Installation Contract dated as of June __, 2022 (the "Contract"), between the Lessee and Performance Services, Inc., and said applicable portion of the Personal Property is suitable and sufficient for the expected uses thereof, however, this statement is made without prejudice to any rights against third parties which exist at the date hereof or which may subsequently come into being; (v) the amount remaining in the Acquisition Fund will, after payment of the amount requested, be sufficient to pay the remaining costs of the Personal Property; (vi) a present need exists for such Personal Property which need is not temporary or expected to diminish in the near future; (vii) such Personal Property is essential to and will be used by the Lessee only for the purpose of performing one or more governmental functions of the Lessee consistent with the permissible scope of the Lessee's authority; (viii) the estimated useful life of such Personal Property based upon the manufacturer's representations and the Lessee's projected needs is not less than the term of the Agreement with respect to such Personal Property; (ix) the Lessee has conducted such inspection and/or testing of such Personal Property as it deems necessary and appropriate and hereby acknowledges that it accepts such Personal Property for all purposes as of the date of this Certificate; (x) such Personal Property is covered by insurance in the types and amounts required by the Agreement; (xi) no Event of Default, as such term is defined in the Agreement, or nonappropriation under the Agreement, and no event which with the giving of notice or lapse of time or both, would become an Event of

Default or nonappropriation under the Agreement, has occurred and is continuing on the date hereof; and (xii) sufficient funds have been appropriated by the Lessee for the payment of all rental payments due under the Agreement during the Lessee's current fiscal year.

Based on the foregoing, the Lessor is hereby authorized and directed to fund the acquisition of the Personal Property set forth in the Agreement by paying, or causing to be paid, the manufacturer(s)/vendor(s), the Lessee or other payee(s) the amounts set forth on the attached invoices from the Acquisition Fund held under the Escrow Agreement in accordance with its terms.

The following documents are attached hereto and made a part hereof: (a) invoice(s) for costs being paid; (b) a current IRS Form W-9 for the payee (unless such IRS Form W-9 has been previously submitted to the Escrow Agent); and (c) lien waivers, if applicable.

IF REQUEST IS FOR REIMBURSEMENT, CHECK HERE . The Lessee paid an invoice prior to the commencement date identified in the Agreement and is requesting reimbursement for such payment. A copy of evidence of such payment together with a copy of the Lessee's Declaration of Official Intent and other evidence required by the Lessor prior to the Lessor's approval hereof that the Lessee has satisfied the requirements for reimbursement set forth in Treas. Reg. 1.150 2 is hereby attached. The Lessor's approval hereof shall evidence that the Lessee has delivered to the Lessor such required documentation.

Date: _____, 20__.

CITY OF DIBOLL, TEXAS

By: _____
Title: _____

APPROVED FOR PAYMENT:

FIRST SECURITY FINANCE, as Lessor

By: _____
Title: _____

EXHIBIT B

FINAL ACCEPTANCE CERTIFICATE

[THIS CERTIFICATE IS TO BE EXECUTED ONLY WHEN ALL PERSONAL PROPERTY HAS BEEN ACCEPTED]

The Lessee hereby certifies that (a) all of the Personal Property described in the Agreement has been received in good condition and has been installed in accordance with the Contract; (b) such Personal Property is accepted "AS-IS, WHERE-IS"; (c) the Lessee has inspected the Personal Property, and determined that it is in good working order and complies with all purchase orders, contracts and specifications; (d) the Lessee has fully and satisfactorily performed all covenants and conditions to be performed by it as of this date under the Agreement with regard to such Personal Property; (e) the Lessee waives any right to revoke its acceptance; and (f) the Personal Property is fully insured in accordance with Section 22 of the Agreement. This certificate is made without prejudice to any rights against third parties which may exist as of the date hereof or which may subsequently come into being.

Dated: _____, 20__.

CITY OF DIBOLL, TEXAS

By: _____
Title: _____

FEDERAL TAX AGREEMENT

[Subject to revision after review of the Issuer's completed tax questionnaire.]

THIS FEDERAL TAX AGREEMENT (the "Tax Agreement"), is executed as of June 28, 2022, by the City of Diboll, Texas (the "Issuer"), for the benefit of First Security Finance, Inc. and its successors and assigns (the "Lessor"), and any firm of attorneys rendering an opinion on the exclusion from gross income for federal income tax purposes of the interest portion of rental payments payable under the Lease Agreement.

RECITALS

1. This Tax Agreement is being executed and delivered in connection with that certain Public Property Finance Act Lease Purchase Agreement dated as of June 28, 2022 (the "Lease Agreement"), entered into by and between the Issuer, as lessee, and the Lessor, as lessor.

2. The Internal Revenue Code of 1986, as amended from time to time, and the applicable Regulations (as defined herein), impose certain limitations on the uses and investment of the Lease Proceeds (as defined herein) and of certain other money relating to the Lease Agreement, and set forth the conditions under which the interest portion of rental payments payable under the Lease Agreement will be excluded from gross income for federal income tax purposes.

3. The Issuer is executing this Tax Agreement in order to set forth certain facts, covenants, representations, and expectations relating to the use of the Lease Proceeds and the property financed or refinanced with those proceeds and the investment of the Lease Proceeds and of certain other related money, in order to establish and maintain the exclusion of the interest portion of rental payments payable under the Lease Agreement from gross income for federal income tax purposes, and to provide guidance for complying with the arbitrage rebate provisions of Code § 148(f).

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Tax Agreement, the Issuer represents, covenants and agrees as follows:

Section 1. Definitions of Words and Terms. Except as otherwise provided in this Tax Agreement or unless the context otherwise requires, capitalized words and terms used in this Tax Agreement have the same meanings as set forth in the Lease Agreement, and certain other words and phrases have the meanings assigned in Code §§ 103, 141-150 and the Regulations. The following words and terms used in this Tax Agreement have the following meanings:

"Annual Compliance Checklist" means a checklist for the Lease Agreement designed to measure compliance with the requirements of this Tax Agreement after the Closing Date substantially in the form attached as **Exhibit D**.

"Benefitted Facilities" or **"Benefitted Facility"** means, as the context requires, all or any of the Issuer's buildings and facilities benefitted from the Project, comprising the Financed Assets as further described on **Exhibit C** to this Tax Agreement. The Benefitted Facilities are expected to include the facilities set on **Exhibit C** to this Tax Agreement.

"Closing Date" means June 28, 2022.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Compliance Officer" means the Finance Director of the Issuer or its designee.

"Financed Assets" and **"Financed Asset"** means, as the context requires, all or any portion of the Project financed with proceeds of the Lease Agreement, as described on **Exhibit C** hereto.

“Investment” means any security, obligation, annuity contract or other investment-type property that is purchased directly with, or otherwise allocated to, Lease Proceeds. This term does not include a tax-exempt bond, except for “specified private activity bonds” as defined in Code § 57(a)(5)(C), but it does include the investment element of most interest rate caps.

“IRS” means the Internal Revenue Service.

“Lease Agreement” means the Public Property Finance Act Lease Purchase Agreement dated as of June 28, 2022, between the Issuer, as lessee, and the Lessor, as lessor, as amended from time to time.

“Lease Proceeds” means the gross proceeds of the Lease Agreement, which include (a) sale proceeds (any amounts actually or constructively received by the Issuer from the execution and delivery of the Lease Agreement, including amounts used to pay a discount or fees to the Lessor, but excluding pre-issuance accrued interest), (b) any amounts received from investing sale proceeds or transferred proceeds or other investment proceeds, (c) any amounts held in a sinking fund for the Lease Agreement, (d) any amounts held in a pledged fund or reserve fund for the Lease Agreement, and (e) any other replacement proceeds.

“Management or Service Agreement” means a legal agreement defined in Regulations § 1.141-3(b) as a management, service, or incentive payment contract with an entity that provides services involving all or a portion of any function of a Financed Asset or a Benefitted Facility, such as a contract to manage all or any portion of the Financed Assets or the Benefitted Facilities. However, contracts for services that are solely incidental to the primary governmental function of a Financed Asset or a Benefitted Facility (for example, contracts for janitorial, office equipment repair, billing or similar services); however, are not treated as Management or Service Agreements.

“Measurement Period” means the period beginning on the later of (i) the Closing Date or (ii) the date the property is placed in service and ending on the earlier of (A) the final maturity date of the Lease Agreement or (B) the expected economic useful life of the property.

“Non-Qualified Use” generally means any use of a Financed Asset or a Benefitted Facility in a trade or business carried on by any Non-Qualified User that is different in form or substance to the use made of a Financed Asset or a Benefitted Facility by any other member of the general public. Generally, ownership, a lease agreement or any other use that provides a Non-Qualified User a special legal right or entitlement to use a Financed Asset or a Benefitted Facility will constitute Non-Qualified Use.

“Non-Qualified User” means any person or entity other than the Issuer.

“Opinion of Special Tax Counsel” means the written opinion of Special Tax Counsel addressed to the Lessor to the effect that the proposed action or the failure to act will not adversely affect the exclusion of the interest portion of rental payments under the Lease Agreement from gross income for federal income tax purposes or an opinion describing additions, modifications or additional procedures required to preserve the interest portion of rental payments under the Lease Agreement from gross income for federal income tax purposes.

“Post-Issuance Tax Requirements” means those requirements related to the use of Lease Proceeds, the use of the Financed Assets and Benefitted Facilities, and the investment of Lease Proceeds after the Closing Date.

“Project” means all of the energy conservation measures acquired, installed, constructed, and equipped by the Issuer using Lease Proceeds and other money contributed by the Issuer, if any, as described on **Exhibit C**.

“Qualified Use Agreement” means any of the following:

(1) A lease or other short-term use by members of the general public who use the Project on a short-term basis in the ordinary course of the Issuer’s governmental purposes.

(2) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Project for a period up to 200 days in length pursuant to an arrangement whereby (a) the use of the Project under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (b) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Qualified User or Non-Qualified User using all or any portion of the Project under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(3) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Project for a period up to 100 days in length pursuant to arrangements whereby (a) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (b) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed, and (c) the Project was not constructed for a principal purpose of providing the property for use by that Qualified User or Non-Qualified User. Any Qualified User or Non-Qualified User using all or any portion of the Project under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(4) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Project for a period up to 50 days in length pursuant to a negotiated arm's-length arrangement at fair market value so long as the Project was not constructed for a principal purpose of providing the property for use by that person.

“Qualified User” means a State, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

“Regulations” means United States Treasury Regulations governing obligations the interest on which is excluded from gross income for federal income tax purposes under Code §§ 103 and 141-150.

“Special Tax Counsel” means Gilmore & Bell, P.C., Kansas City, Missouri, or other nationally recognized firm of bond counsel acceptable to the Lessor.

“State” means the State of Texas.

“Tax Compliance File” means documents and records for the Lease Agreement maintained by the Compliance Officer pursuant to this Tax Agreement.

“Yield” means the yield on the Lease Agreement, computed under Regulations § 1.148-4, and yield on an Investment, computed under Regulations § 1.148-5.

Section 2. Organization and Authority; General Representations.

(a) **Authority.** The Issuer (1) is a political subdivision organized and existing under the laws of the State, (2) has lawful power and authority to enter into, execute and deliver the Lease Agreement for the purposes set forth in the Lease Agreement and this Tax Agreement and to carry out its obligations under this Tax Agreement and under such documents, and (3) by all necessary action has been duly authorized to execute and deliver the Lease Agreement and this Tax Agreement, acting by and through its duly authorized officials.

(b) **Tax-Exempt Status of Lease Agreement—General Representation and Covenants.** In order to maintain the exclusion of the interest component of Rental Payments payable under the Lease Agreement from gross income for federal income tax purposes, the Issuer (1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code; (2) will not use or invest, or permit the use or

investment of, any Lease Proceeds or other funds of either party in a manner that would violate applicable provisions of the Code; and (3) will not use, or permit the use of, any portion of the Financed Assets or any Benefitted Facilities, in a manner that would cause any portion of the Lease Agreement to become a “private activity bond” as defined in Code § 141.

Section 3. Purpose of the Lease Agreement; Reimbursement; Use of Lease Proceeds.

(a) *Purpose.* The Lease Agreement is being executed and delivered for the purpose of paying (i) costs of the Project, including payment of capitalized interest during the acquisition period thereof, and (ii) certain costs of issuance in connection with the execution and delivery of the Lease Agreement.

(b) *Reimbursement.* Reimbursement from proceeds of the Lease Agreement of expenditures paid prior to the Closing Date will satisfy the requirements of Regulations § 1.150-2. The list of expenditures to be reimbursed, if any, are set forth on **Exhibit C**.

(c) *Use of Lease Proceeds.* On the Closing Date, all proceeds of the Lease Agreement in the amount of \$5,606,325 are expected to be deposited in the Acquisition Fund and used to pay costs of the Financed Assets, including payment of capitalized interest during the acquisition period thereof, and certain costs of issuance in connection with the execution and delivery of the Lease Agreement.

Section 4. Project Completion. The Issuer has incurred, or will incur within 6 months after the Closing Date, a substantial binding obligation to a third party to spend at least 5% of the Lease Proceeds on the Financed Assets. The completion of the Financed Assets and the allocation of the Lease Proceeds to expenditures will proceed with due diligence. At least 85% of the proceeds of the Lease Agreement will be allocated to expenditures on the Financed Assets within 3 years after the Closing Date.

Section 5. Funds or Accounts. The Acquisition Fund has been established under the Escrow Agreement with the Escrow Agent. Amounts held in the Acquisition Fund will be used to pay costs of the Project. No other funds or accounts have been established for the Lease Agreement to hold Lease Proceeds or other money that will be used to make rental payments under the Lease Agreement.

Section 6. Rebate and Yield Restriction.

(a) *Lessor's Certification of Issue Price.* The Lessor represents in the Issue Price Certificate dated as of the Closing Date that it is acquiring the Lease Agreement for the amount of \$5,606,325 (the “Issue Price”), and that it presently intends to hold the Lease Agreement for its own account as an investment with no present intent to sell, assign or transfer the Agreement.

(b) *Lease Agreement Yield.* Based on the Issue Price, Special Tax Counsel has determined that the Yield on the Lease Agreement is ____%. The amortization schedule and calculation of the Yield on the Lease Agreement is attached to this Tax Agreement as **Exhibit A**. The Issuer has not entered into an interest rate swap agreement with respect to any portion of Lease Proceeds.

(c) *Lease Agreement Subject to the Rebate Requirement.* The Lease Agreement is subject to the arbitrage rebate requirements of Code § 148(f). Pursuant to the Escrow Agreement, investment of the Lease Agreement Proceeds is limited to placement in an interest-bearing demand deposit account. If the Yield on investments of the Acquisition Fund exceeds ____, or if the Issuer establishes any sinking or reserve fund for the Lease Agreement, then the Issuer will contact Special Tax Counsel to seek advice regarding the need to calculate and pay arbitrage rebate.

Section 7. Use of Financed Assets and Benefitted Facilities.

(a) *General.* The Project will be owned by the Issuer throughout the Measurement Period. Except as otherwise described in this **Section 6**, no portion of the buildings and facilities comprising the Project is expected to be used in a Non-Qualified Use during the Measurement Period. Unless the Issuer obtains an Opinion of Special Tax Counsel, the Issuer will not use, or permit the use of, the buildings and facilities comprising the Project in any other Non-Qualified Use.

(b) *Management of Service Agreements.* As of the Closing Date, the Issuer does not have any Management or Service Agreements with Non-Qualified Users that relate to the management or operation of any portion of the facilities comprising the Project. During the Measurement Period, the Issuer will not enter into or renew any Management or Service Agreement with any Non-Qualified User with respect to the management or operation of any portion of the facilities comprising the Project without first obtaining an Opinion of Special Tax Counsel.

(c) *Leases and Other Use Agreements.* As of the Closing Date, the Issuer does not have any leases or similar use agreements with Non-Qualified Users with respect to the facilities comprising the Project. During the Measurement Period, the Issuer will not enter into or renew any leases or similar use agreements with any Non-Qualified Users, other than Qualified Use Agreements, with respect to the facilities comprising the Project without first obtaining an Opinion of Special Tax Counsel.

(d) *Written Policies and Procedures of the Issuer.* The Issuer intends for this Tax Agreement to be its primary written policies and procedures for monitoring compliance with the Post-Issuance Tax Requirements for the Lease Agreement and to supplement any other formal policies and procedures related to the Post-Issuance Tax Requirements that the Issuer has established.

(e) *Compliance Officer.* The Issuer, when necessary to fulfill the Post-Issuance Tax Requirements, will, through the Compliance Officer, sign Form 8038-T in connection with the payment of arbitrage rebate or Yield reduction payments, participate in any federal income tax audit of the Lease Agreement or related proceedings under a voluntary compliance agreement procedures (VCAP) or undertake a remedial action procedure pursuant to Regulations § 1.141-12.

(f) *Annual Compliance Checklist.* Attached as **Exhibit D** is a form of Annual Compliance Checklist for the Lease Agreement. The Compliance Officer will prepare and complete an Annual Compliance Checklist for the Financed Assets and Benefitted Facilities at least annually. In the event the Annual Compliance Checklist identifies a deficiency in compliance with the requirements of this Tax Agreement, the Compliance Officer will obtain an Opinion of Special Tax Counsel and take actions to correct any deficiency.

Section 8. Recordkeeping. The Compliance Officer will maintain the Tax Compliance File for the Lease Agreement in accordance with this Tax Agreement. Unless otherwise specifically instructed in a written Opinion of Special Tax Counsel or to the extent otherwise provided in this Tax Agreement, the Compliance Officer shall retain records related to the Post-Issuance Tax Requirements until 3 years following the final maturity of (i) the Lease Agreement or (ii) any obligation issued to refund the Lease Agreement. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22, which generally provides that an electronic storage system must (1) ensure an accurate and complete transfer of the hardcopy records which indexes, stores, preserves, retrieves and reproduces the electronic records, (2) include reasonable controls to ensure integrity, accuracy and reliability of the electronic storage system and to prevent unauthorized alteration or deterioration of electronic records, (3) exhibit a high degree of legibility and readability both electronically and in hardcopy, (4) provide support for other books and records of the Issuer, and (5) not be subject to any agreement that would limit the ability of the IRS to access and use the electronic storage system on the Issuer's premises.

Section 9. Miscellaneous

(a) *Form 8038-G.* A copy of the completed and fully executed IRS Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) is attached to this Tax Agreement as **Exhibit B**. The Form 8038-G was prepared by Special Tax Counsel based on representations and covenants by the Issuer contained in this Tax Agreement or otherwise made by the Issuer. The information contained on Form 8038-G is true, complete and correct to the knowledge of the undersigned, and the undersigned is authorized to sign the Form 8038-G on behalf of the Issuer and deliver it to Special Tax Counsel for filing with the IRS.

(b) *Single Issue.* No other debt obligations of the Issuer: (1) are being sold within 15 days of the execution and delivery of the Lease Agreement, (2) are being sold under the same plan of financing as the Lease Agreement, and (3) are expected to be paid from substantially the same source of funds as the Lease Agreement (disregarding guarantees from unrelated parties, such as bond insurance).

[**(c) *Bank Qualified Tax-Exempt Obligation.* The Issuer designates the Lease Agreement as a “qualified tax-exempt obligation” under Code § 265(b)(3), and with respect to this designation certifies as follows:

(1) The Issuer reasonably anticipate that the amount of tax-exempt obligations (other than private activity bonds that are not qualified 501(c)(3) bonds) that will be issued by or on behalf of the Issuer (and all subordinate entities of the Issuer) during the calendar year that the Lease Agreement is executed and delivered, including the Lease Agreement, will not exceed \$10,000,000; and

(2) The Issuer (including all subordinate entities of the Issuer) will not issue tax-exempt obligations (other than private activity bonds that are not qualified 501(c)(3) bonds) during the calendar year that the Lease Agreement is executed and delivered, including the Lease Agreement, in an aggregate principal amount or aggregate issue price in excess of \$10,000,000, without first obtaining an Opinion of Special Tax Counsel that the designation of the Lease Agreement as a “qualified tax-exempt obligation” will not be adversely affected.**]

(d) *No Federal Guaranty.* The payment of rental payments under the Lease Agreement are not, and the Issuer will not permit the payment of rental payments under the Lease Agreement to be, directly or indirectly guaranteed by the United States of America or any agency thereof.

(e) *Hedge Bonds.* The Issuer reasonably expects that at least 85% of the net sale proceeds (the sale proceeds of the Lease Agreement less any sale proceeds invested in a reserve fund) of the Lease Agreement will be used to carry out the governmental purpose of the Lease Agreement within 3 years after the Closing Date, and not more than 50% of the proceeds of the Lease Agreement will be invested in Investments having a substantially guaranteed Yield for 4 years or more.

(f) *Registration Requirement; Record Owner.* The Issuer will maintain or cause to be maintained a record of the owner(s) of the Lease Agreement and the person/entity entitled to the receipt of the interest portions of rental payments under the Lease Agreement. Transfer of ownership of the Lease Agreement is effective only if entered in these records.

(g) *Reliance.* The Issuer understands that its certifications will be relied upon by the law firm of Gilmore & Bell, P.C., in rendering its opinion as to the validity of the Lease Agreement and the exclusion from federal gross income of the interest portion of payments payable by the Issuer under the Lease Agreement.

(h) *Enforceability.* If any provision in this Tax Agreement or in the Lease Agreement is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

(i) *Electronic Transactions.* The transaction described in this Tax Agreement may be conducted, and related documents may be stored, by electronic means.

IN WITNESS WHEREOF, the undersigned, by execution of this Tax Agreement, hereby makes the foregoing certifications, representations, and agreements contained in this Tax Agreement on behalf of the Issuer.

CITY OF DIBOLL, TEXAS

By: _____
Trey Wilkerson, Mayor

EXHIBIT A

**AMORTIZATION SCHEDULE AND CALCULATION OF
WEIGHTED AVERAGE MATURITY AND YIELD ON THE LEASE AGREEMENT**

[To be prepared by Gilmore & Bell.]

EXHIBIT B

IRS FORM 8038-G

[Post Closing Item -- To be prepared and filed by Gilmore & Bell.]

EXHIBIT C

**DESCRIPTION OF PERSONAL PROPERTY EXPECTED TO
COMPRISE FINANCED ASSETS AND BENEFITTED FACILITIES**

Description of Financed Assets:

The Financed Assets consists of all Personal Property acquired and installed in connection with the energy savings improvements as set forth in the Installation Contract dated as of June __, 2022, between the Issuer and Performance Services, Inc., including (a) heating, ventilation and air conditioning upgrades, LED lighting, building automation system upgrades and siding and roof upgrades at certain of Lessee’s facilities, and (b) replacement of water meters and related infrastructure at various locations throughout the City of Diboll, Texas, and other areas served by the City of Diboll, Texas water department.

The estimated average economic life of the Financed Assets is not less than 21 years, and the Issuer expects the Financed Assets to be placed in service in 2023.

Sources and Uses of Funds:

The overall financing sources and uses of the Lease Agreement are expected to be as follows:

Source:

Lease Agreement Proceeds.....	<u>\$5,606,325.00</u>
Total Sources:.....	<u>\$5,606,325.00</u>

Uses:

Acquisition and Installation of Financed Assets.....	\$5,398,985.70
Payment of Capitalized Interest during acquisition period.....	190,839.30
Costs of Issuance	<u>16,500.00</u>
Total Uses:.....	<u>\$5,606,325.00</u>

EXHIBIT D

SAMPLE ANNUAL COMPLIANCE CHECKLIST

<p>Name of tax-exempt obligation (“Lease Agreement”) financing the Financed Assets:</p>	<p>This Annual Compliance Checklist is designed to cover that certain Public Property Finance Act Lease Purchase Agreement (the “Lease Agreement”) dated as of June 28, 2022, entered into by and between the City of Diboll, Texas, as lessee, and First Security Finance, Inc., as lessor</p>	
<p>Placed in service date of Financed Assets:</p>	_____	
<p>Benefitted Facilities:</p>	_____	
<p>Name of Compliance Officer:</p>	_____	
<p>Period covered by request (“Annual Period”):</p>	_____	
Item	Question	Response
1 Ownership	For federal income tax purposes, were all of the Financed Assets and Benefitted Facilities owned by the Issuer for federal tax purposes during the entire Annual Period?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>If answer above was “No,” was an Opinion of Special Tax Counsel obtained prior to the transfer?</p> <p align="center">If Yes, include a copy of the Opinion in the Tax Compliance File.</p> <p align="center">If No, contact Special Tax Counsel and include description of resolution in the Tax Compliance File.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
2 Use of the Financed Assets and the Benefitted Facilities	During the Annual Period, was any Financed Asset or Benefitted Facility used by a Non-Qualified User pursuant to a lease agreement or similar use agreement or arrangement, management or service agreement or any other agreement granting the Non-Qualified User special legal rights to use any Financed Asset or Benefitted Facility?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>If answer above was “Yes,” was an Opinion of Special Tax Counsel obtained prior to entering into the arrangement?</p> <p align="center">If Yes, include a copy of the Opinion in the Tax Compliance File.</p> <p align="center">If No, contact Special Tax Counsel and include description of resolution in the Tax Compliance File.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
3 Arbitrage & Rebate	<p>1. Were the proceeds of the Lease Agreement spent in accordance with the following schedule? (a) at least 15% within 6 months from the Closing Date; (b) at least 60% within 12 months from the Closing Date; and (c) 100% within 18 months from the Closing Date.</p> <p>2. Has the Issuer established a fund or account to make rental payments under the Lease Agreement or has the Issuer established a segregated portion of investments in an account to make rental payments under the Lease Agreement?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>If the answer to question 1 above is “No,” or the answer to question 2 above was “Yes,” contact Special Tax Counsel to determine if an arbitrage rebate or yield restriction calculation must be completed.</p> <p>Include a description of Special Tax Counsel’s advice in the Tax Compliance File. If an arbitrage rebate or yield restriction calculation is prepared, include a copy of the report in the Tax Compliance File.</p>	

By: _____
Compliance Officer

Date Completed: _____

LESSEE’S CLOSING CERTIFICATE

Re: Public Property Finance Act Lease Purchase Agreement dated as of June 28, 2022 (the “Agreement”), between First Security Finance, Inc., as lessor (the “Lessor”), and the City of Diboll, Texas, as lessee (the “Lessee”)

We, the undersigned, the duly appointed, qualified and acting Mayor and City Secretary, respectively, of the City of Diboll, Texas (the “Lessee”), do hereby certify as follows:

Section 1. The Lessee did, at a meeting of the governing body of the Lessee held June 21, 2022, by motion duly made, seconded and carried, in accordance with all requirements of law, approve and authorize the execution and delivery of (a) the Installation Contract between the Lessee and Performance Services, Inc (the “Contract”), and (b) the above-referenced Agreement and related escrow agreement and tax agreement on the Lessee’s behalf by the following named representative of the Lessee:

<u>Trey Wilkerson</u>	<u>Mayor</u>	
Printed Name	Title	Signature

[This signature line to be signed by person who executed the Contract and the Agreement and related escrow agreement and tax agreement on behalf of the Lessee.]

Section 2. The above-named representative of the Lessee held at the time of such authorization and holds at the present time the office designated above and the signature set forth opposite his or her name is the true and correct specimen of his or her genuine signature.

Section 3. At the meeting described in Section 1 above, the representative of the Lessee named above and the officers or employees of the Lessee from time to time holding the offices or titles set forth below were designated as authorized representatives of the Lessee for the Contract and the Agreement and related escrow agreement and tax agreement (any of them acting alone), and each of the persons listed below is the current holder of the office or title indicated and the signature set forth opposite name of each of them is the true and correct specimen of his or her genuine signature:

<u>Title</u>	<u>Printed Name</u>	<u>Signature</u>

Section 4. The representatives of the Lessee who signed the resolution held at the time of such authorization and hold at the present time the office designated in the resolution.

Section 5. The meeting of the governing body of the Lessee at which the resolution was adopted and the Contract and the Agreement and related escrow agreement and tax agreement were approved and authorized to be executed was duly called, regularly convened and attended by the requisite majority of the members thereof or by other appropriate official approval, and the actions approving the Contract and the Agreement and related escrow agreement and tax agreement and authorizing the execution thereof have not been altered or rescinded. *Attached hereto is a true and correct copy of the resolution or other documents constituting such official actions.*

Section 6. 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 (as such term is defined in the Agreement) exists at the date hereof.

Section 7. All insurance required in accordance with the Agreement is currently maintained by the Lessee.

Section 8. 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 or the interest of the Lessor or its assigns, as the case may be, in the Personal Property (as defined in the Agreement).

Section 9. The Personal Property (as defined in the Agreement) has not been the subject of a referendum that failed to receive the approval of the voters of the Lessee within the preceding four years.

Section 10. The correct billing address for payments under the Agreement is as follows:

City of Diboll, Texas
400 Kenley Street
Diboll, Texas, 75941
Attention: Finance Director

Date: June 28, 2022.

CITY OF DIBOLL, TEXAS

By: _____
Trey Wilkerson, Mayor

By: _____
Rosa Olvera, City Secretary

**ATTACHMENT TO
LESSEE'S CLOSING CERTIFICATE**

**EVIDENCE OF AUTHORIZATION
(per Section 5)**

[Please provide signed copy of authorizing resolution to Lessor prior to Closing Date.]

ESSENTIAL USE CERTIFICATE

June 28, 2022

First Security Finance, Inc.
First Security Center
521 President Clinton Ave., Ste. 800
Little Rock, AR 72201

Re: Public Property Finance Act Lease Purchase Agreement dated as of June 28, 2022, between the City of Diboll, Texas, as lessee (“Lessee”), and First Security Finance, Inc., as lessor (“Lessor”) (the “Agreement”)

Ladies and Gentlemen:

I, Trey Wilkerson, a duly elected, appointed, or designated representative of the City of Diboll, Texas (“Lessee”), am qualified to answer the questions set forth below regarding the Personal Property to be acquired by Lessee in connection with the above-referenced Agreement:

1. *What is the specific use of the Personal Property?*

2. *What increased capabilities will the Personal Property provide?*

3. *Why is the Personal Property essential to your ability to deliver governmental services?*

4. *Does the Personal Property replace existing personal property?*
(If so, please explain why you are replacing the existing personal property)

5. *Why did you choose this specific Personal Property?*

6. *For how many years do you expect to utilize the Personal Property?*

7. *What revenue source will be utilized to make Rental Payments due under the Agreement?*

Very truly yours,

CITY OF DIBOLL, TEXAS

By: _____
Trey Wilkerson, Mayor

OPINION OF LESSEE'S COUNSEL
(Please furnish on letterhead.)

June 28, 2022

First Security Finance, Inc.
First Security Center
521 President Clinton Ave., Ste. 800
Little Rock, AR 72201

Re: Public Property Finance Act Lease Purchase Agreement dated as of June 28, 2022 (the "Agreement"), between First Security Finance, Inc., as lessor (the "Lessor"), and the City of Diboll, Texas, as lessee (the "Lessee")

Ladies and Gentlemen:

As legal counsel to the Lessee, I have examined (a) an executed counterpart of the above-referenced Agreement which, among other things, provide financing for the purchase by the Lessee of the Personal Property described therein, (b) an executed counterpart of the Escrow Agreement, dated as of June 28, 2022 (the "Escrow Agreement"), among the Lessor, the Lessee and Bank OZK, as escrow agent, (c) an executed copy of the Lessee's Federal Tax Agreement, dated the date hereof (the "Tax Agreement"), (d) an executed counterpart of the Installation Contract dated as of June __, 2022, between Lessee and Performance Services, Inc. (the "Contract"), (e) an executed copy of the resolution of the Lessee which, among other things, authorizes the Lessee to execute the Agreement, the Escrow Agreement, the Tax Agreement and the Contract (collectively, the "Lessee Documents"), and (f) 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. The Lessee is a public body corporate and politic, duly organized and existing under the laws of the State of Texas, and has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power.
2. The Lessee has the requisite power and authority to purchase the Personal Property and to execute and deliver the Lessee Documents and to perform its obligations thereunder.
3. The Lessee Documents and the other documents either attached thereto or required therein have been duly authorized, approved and executed by and on behalf of the Lessee, and the Lessee Documents are valid and binding obligations of the Lessee enforceable in accordance with their respective terms.
4. The authorization, approval and execution of the Lessee Documents and all other proceedings of the Lessee 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, including without limitation **[Note to Counsel: reference applicable Texas Energy Savings Statute].**
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 Lessee Documents or the security interest of the Lessor or its assigns, as the case may be, in the Personal Property.
6. The Personal Property constitutes personal property and when subjected to use by the Lessee will not be or become a fixture under applicable law.
7. The authorization, execution, delivery and performance of the Lessee Documents by the Lessee do not require submission to, approval of, or other action by any governmental authority or agency which action has not been taken and is final and non-appealable.

All capitalized terms herein will have the same meanings as in the Agreement. The Lessor, its successors and assigns and any counsel rendering an opinion on the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation are entitled to rely on this opinion.

Very truly yours,

**LESSOR'S ISSUE PRICE CERTIFICATE AND
OPINION OF SPECIAL COUNSEL TO LESSOR**

[To be prepared by Gilmore & Bell.]

INSTALLATION CONTRACT; VENDOR'S THIRD PARTY REVIEW LETTER.

[Please provide signed copies of contract and Vendor's third party review letter to Lessor prior to Closing Date.]

EVIDENCE OF INSURANCE

INSURANCE CERTIFICATES (PROPERTY, LIABILITY AND WORKERS' COMPENSATION) COMPLYING WITH THE PROVISIONS OF SECTION 22 OF THE AGREEMENT TO BE PROVIDED BY LESSEE, WITH THE FOLLOWING PARTY SHOWN AS LOSS PAYEE AND ADDITIONAL INSURED WITH RESPECT TO PROPERTY INSURANCE, AND SHOWN AS ADDITIONAL INSURED WITH RESPECT TO LIABILITY INSURANCE:

First Security Finance, Inc. and its successors and assigns
First Security Center
521 President Clinton Avenue, Suite 800
Little Rock, AR 72201

[To be provided by Lessee prior to disbursement of money from the Acquisition Fund for payment of costs of the Personal Property.]

PAYMENT AND PERFORMANCE BONDS

**PAYMENT AND PERFORMANCE BONDS RESPECTING THE PERSONAL PROPERTY, INCLUDING
DUAL OBLIGEE RIDER SHOWING THE FOLLOWING PARTY AS AN ADDITIONAL OBLIGEE:**

First Security Finance, Inc. and its successors and assigns
First Security Center
521 President Clinton Avenue, Suite 800
Little Rock, AR 72201

*[To be provided by Vendor prior to disbursement of money from
the Acquisition Fund for payment of costs of the Personal Property.]*

UCC SEARCH RESULTS AND UCC-1 FINANCING STATEMENT

[To be ordered, prepared and filed by Gilmore & Bell.]

LESSEE'S FORM W-9

[Please provide signed W9 to Lessor.]

TEXAS ETHICS COMMISSION FORM 1295 FILINGS

- A. Respecting the Installation Contract (filed by the Vendor).
- B. Respecting the Public Property Finance Act Lease Purchase Agreement (filed by the Lessor).

[To Come.]

FUNDING MEMORANDUM

[To be prepared by Lessor.]

FEDERAL TAX DUE DILIGENCE QUESTIONNAIRE
(the "Questionnaire")

\$5,606,325

PUBLIC PROPERTY FINANCE ACT LEASE PURCHASE AGREEMENT
DATED AS OF JUNE 28, 2022, BETWEEN
FIRST SECURITY FINANCE, INC., AS LESSOR, AND THE
CITY OF DIBOLL, TEXAS, AS LESSEE
(the "Agreement")

Name of Lessee: City of Diboll, Texas
Address of Lessee: 400 Kenley St., Diboll, Texas 75941
Contact Person: Sam Durham, Finance Director
Telephone number: (936) 829-4757
Email address: sdurham@cityofdiboll.com
Lessee's Federal
Employer
Identification No.: 75-1104344

Check one of the following:

- The proceeds of the Agreement will finance only new projects**
- The proceeds of the Agreement will refinance existing projects**
- The proceeds of the Agreement will finance new projects and refinance existing projects.**

The Internal Revenue Code and the U.S. Department of Treasury Regulations require issuers of tax-exempt obligations to identify how the proceeds of the Agreement are expected to be spent and how the property that is to be financed with proceeds of the Agreement is expected to be used. For purposes of this Questionnaire, all of the property comprising the project all or a portion of which will be financed with proceeds of the Agreement is referred to as the "Financed Assets".

Part 1 – Description of the Financed Assets

As a part of our tax due diligence, we will need the Lessee or the Vendor to provide us with certain information about the Personal Property and the buildings and facilities at which the Personal Property will be installed (the "Benefitted Facilities"), including estimated useful life of each component (including cost breakdowns by type) and year placed in service. After we receive that information, we will prepare a description of the Financed Assets to be attached to the Lessee's Federal Tax Agreement.

Part 2 – Uses of the Financed Assets

The following questions relate to how the Financed Assets and the Benefitted Facilities are or are expected to be used. Please review each question and mark the appropriate answer and/or provide the data requested with respect to the uses of the Financed Assets and the Benefitted Facilities. If you are uncertain regarding the meaning of any question or whether a particular arrangement related to the Financed Assets is covered by the scope of a question, please contact Special Tax Counsel to discuss.

1. **Management Agreement.** Is there or is there expected to be a contract with a Non-Qualified User (i.e., a private company, 501(c)(3) organization, the federal government or any agency of the federal government) to operate, manage, or provide services for any portion of the Financed Assets or the Benefitted Facilities?

(Do not include contracts for services incidental to the management of the improvements, such as janitorial, office equipment repair, billing or similar services.)

YES NO

If yes, please include a copy of the service or management agreement(s) or information regarding the planned service or management agreement(s) in your response to this Questionnaire.

2. **Leases.** Are there or are there expected to be any lease or other use agreements, either short-term or long-term, that provide a Non-Qualified User (as defined in Question 1 above) legal rights to use any portion of the Financed Assets or the Benefitted Facilities?

YES NO

If yes, please include a copy of the lease agreement(s) or information regarding the planned lease agreement(s) in your response to this Questionnaire.

Part 3 – Reimbursement of Prior Expenditures

1. **Reimbursement for Costs Already Paid.** Will any of the Agreement proceeds be used to reimburse the Lessee for project costs paid prior to the closing date for the Agreement?

YES NO

If “Yes”, please attach the following: (A) a copy of the Lessee’s resolution or similar documentation indicating the Lessee’s official intent to be reimbursed for project expenditures from proceeds of a tax-exempt financing; and (B) a listing of all expenditures incurred to date for which the Lessee would like to be reimbursed from Agreement proceeds. This list should include the following: (1) date the expenditure was paid; (2) vendor paid; (3) amount paid; and (4) purpose of payment.

Part 4 - Bank Qualification

1. Other than the Agreement, does the Lessee (or any subordinate entities, such as a financing public corporation) reasonably expect to issue any other tax-exempt obligations (including any tax-exempt lease-purchase financings) in this calendar year?

YES NO

2. If the answer to Question 1 above is “Yes,” does the Lessee reasonably expect to issue more than \$10,000,000 of tax-exempt obligations (including the Agreement and any tax-exempt lease purchase financings) in this calendar year (excluding private activity bonds that are not qualified 501(c)(3) bonds)?

YES NO

Part 5- Written Tax Compliance Procedures

1. Written Tax Compliance Procedures to Monitor Use of Assets. Has the Lessee established written procedures to monitor compliance with the federal tax restrictions for the term of the Agreement? The written procedures should identify a particular individual within the Lessee's organization responsible for monitoring compliance with the federal tax requirements related to use of the financed assets and describe actions to be taken in the event failure to comply with federal tax restrictions is contemplated or discovered. Further information regarding the IRS announcements regarding post-issuance tax compliance and sample written post-issuance tax compliance procedures, are available at www.gilmorebell.com, and click on the "Resources" header. Attached to this questionnaire is a posting found on the IRS's webpage describing the purpose of written compliance proceedings and the minimum requirements a written procedure should cover. If the Lessee has not already adopted written post-issuance compliance procedures that satisfy the six minimum requirements, we are happy to assist with preparing and adopting post-issuance tax compliance procedures.

YES NO

If "Yes," please attach a copy of the established written compliance procedures.

2. Written Tax Compliance Procedures to Monitor Yield on Investment of Agreement Proceeds. Has the Lessee established written compliance procedures to monitor the yield on the investment of proceeds of the Agreement on deposit in an escrow account or similar fund prior to being spent and to ensure that any positive arbitrage rebate earned is paid to the United States?

YES NO

If "Yes," please attach a copy of the established written compliance procedures.

If you have questions concerning the information we have requested, contact Gilmore & Bell, P.C. as follows:

Jason Schurke
(816) 218-7528
jschurke@gilmorebell.com

Dated: June 21, 2022.

CITY OF DIBOLL, TEXAS

By: Sam Durham
Name: Sam Durham
Title: Finance Director



Tax Exempt Bond Topics

- [About TEB](#)
- [TEB Forms & Pubs](#)
- [IRM](#)
- [TEB Newsletters](#)
- [VCAP](#)
- [TEB Tax Stats](#)
- [TEB Questionnaires](#)
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TEB Post-Issuance Compliance: Some Basic Concepts

Tax Exempt Bonds (TEB) focuses on providing participants in the municipal bond industry with quality service to assist issuers and conduit borrowers in understanding their tax responsibilities. As part of that service, TEB is providing the following basic information for issuers of tax-advantaged bonds with respect to their post-issuance compliance requirements. Issuers may use this basic information to establish due diligence practices to monitor tax compliance throughout the period that their bonds are outstanding. However, issuers may not cite this basic information as an authoritative source. TEB recommends that issuers review this basic information in consultation with their counsel.

Generally

Tax-advantaged bonds (tax-exempt, tax credit, and direct pay) are bonds that receive preferential tax treatment. These bonds, issued by or on behalf of state and local governments, are subject to applicable federal tax requirements both at the time of issuance and for so long as the bonds remain outstanding. An issuer or other party's failure to comply with any applicable federal tax requirement with respect to tax-advantaged bonds jeopardizes the preferential tax status of those bonds.

Compliance with certain applicable federal tax requirements normally occurs at the closing of the bond transaction, while other federal tax requirements require on-going monitoring after the issuance of the bonds. Issuance related requirements include filing a Form 8038 series Information return (8038, 8038-G, 8038-GC, 8038-B, or 8038-TC) and the issuer having reasonable expectations of on-going post-issuance compliance. Additional issuance related requirements might include volume cap allocation limits and public approval of the bond issue.

Post-issuance federal tax requirements generally fall into two categories: (1) qualified use of proceeds and financed property; and (2) arbitrage yield restriction and rebate. Qualified use requirements require monitoring of the various direct and indirect uses of bond-financed property over the life of the bonds and calculations of the percentage of nonqualified uses. Arbitrage requirements also require monitoring over the life of the bonds to determine whether both the yield on investments acquired with bond proceeds are properly restricted and whether the issuer must file Form 8038-T to pay a yield reduction payment and/or rebate payment.

Some federal tax requirements that are generally issuance related might require some level of post-issuance due diligence monitoring. For example, adjustments to the determination of issue price for federal tax purposes can affect compliance with volume cap allocation, arbitrage yield restriction, and other federal tax requirements. Similarly, some level of post-issuance monitoring may be required to determine compliance with the issuance costs limitations applicable to qualified private activity bonds.

Importance of Post-Issuance Compliance

The on-going nature of post-issuance compliance requirements applicable to tax-advantaged bonds requires issuers to actively monitor compliance throughout the entire period their bonds remain outstanding. This due diligence will significantly improve the issuer's ability to identify noncompliance and prevent violations from occurring, or timely correct identified violations (when prevention is not possible), to ensure the continued tax-advantaged status of the bonds.

Written Procedures for Monitoring Compliance

Issuers should adopt written procedures, applicable to all bond issues, which go beyond reliance on tax certificates included in bond documents provided at closing. Sole reliance on the closing bond documents may result in procedures insufficiently detailed or not incorporated into an issuer's operations. Written procedures should contain certain key characteristics, including making provision for:

- Due diligence review at regular intervals;
- Identifying the official or employee responsible for review;
- Training of the responsible official/employee;
- Retention of adequate records to substantiate compliance (e.g., records relating to expenditure of proceeds);
- Procedures reasonably expected to timely identify noncompliance; and
- Procedures ensuring that the issuer will take steps to timely correct noncompliance.

The goal of establishing and following written procedures is to identify and resolve noncompliance, on a timely basis, to preserve the preferential status of tax-advantaged bonds. Generally, an issuer that has established and followed comprehensive written procedures to promote post-issuance compliance is less likely, than an issuer that does not have such procedures, to violate the federal tax requirements related to its bonds.

How Does the IRS Promote Post-Issuance Compliance?

TEB administers a [Voluntary Closing Agreement Program \(TEB VCAP\)](#) to assist issuers in resolving federal tax violations related to their bonds as described in [Notice 2008-31](#) and [IRM section 7.2.3](#).

Generally, an issuer will receive more favorable resolution terms under TEB VCAP than for the same tax violation discovered during an examination of the bonds. In addition, an issuer that identifies a violation in accordance with the implementation of its written post-issuance compliance procedures can generally expect to receive more favorable treatment in resolving its tax violation under TEB VCAP than if the issuer has not implemented such procedures.

TEB uses compliance check questionnaires to evaluate compliance trends and practices issuers use to monitor compliance with federal tax requirements. For example, in May 2011 TEB initiated a [questionnaire project on advance refundings](#). Generally, the design of the questionnaires is to gather information from a segment of the municipal bond market. While these questionnaires are not examinations of specific bond issues, the data collected allows TEB to develop new voluntary compliance and education programs as well as to identify future compliance projects.

Issuers of tax-advantaged bonds are required to file a Form 8038 series information return. All Form 8038 series returns include questions regarding whether the issuer has established written procedures to timely identify and correct violations and to ensure compliance with the arbitrage yield restriction and rebate requirements.

[The Advisory Committee on Tax Exempt and Government Entities \(ACT\)](#) issued several reports related to post-issuance compliance. Specific ACT recommendations on post-issuance compliance procedures are included in an [exhibit to its June 2007 report](#).

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