

**Request for Proposal #17-05
Equipment Lease Purchase Agreement
Clovis Community College District, NM**

Clovis Community College District, NM is soliciting term sheet proposals from lending institutions to provide tax-exempt equipment lease purchase financing for the acquisition and installation of various energy and water conservation measures to be installed by Siemens Industry, Inc. The following Summary of Terms and Conditions has been developed with the intent to solicit proposals from potential respondents.

SUMMARY OF TERMS AND CONDITIONS

- DATE:** June 21, 2017
- PROPOSAL DUE DATE:** July 12, 2017 - 2:00 PM MDT
- LESSEE:** Clovis Community College District
- LESSEE'S CO-BOND COUNSEL:** Cuddy & McCarthy, LLP and McCall, Parkhurst & Horton L.L.P.
- LEASE PURCHASE ARRANGER:** George K. Baum & Company
- LESSOR:** To Be Determined
- ESCROW AGENT:** BOKF, N.A.
- CONTRACTOR:** Siemens Industry, Inc.
- PURPOSE:** The purpose of this transaction is to provide tax-exempt equipment lease purchase financing for the acquisition of various energy and water conservation measures (collectively, the *"Equipment"* – described below) to be installed by the Contractor.
- LESSEE INFORMATION:** The Lessee is located in eastern New Mexico, near the Texas border. Information about the Lessee is available on its website (link below). The Lessee has no rated debt; however, it does have an outstanding note agreement with the New Mexico Finance Authority. The Lessee's audited financial statements are available on the website of the New Mexico Office of the State Auditor (link below). Click on Financial Audits and search for the Lessee.
Lessee website: <http://www.clovis.edu/index.aspx>
State Auditor's website: <https://www.saonm.org/>
- ENABLEING STATUTE:** The Lessee is procuring this project and financing under New Mexico's Public Facility Energy Efficiency and Water Conservation Act (the *"Act"* – link provided below). The Act allows a Governmental Unit to enter into a Guaranteed Utility

Savings Contract (the “Contract”) with a Qualified Provider to install various Energy Conservation Measures and Water Conservation Measures. The Act requires the Qualified Provider provide a written guarantee that the annual Utility Cost Savings and Conservation-Related Cost Savings shall meet or exceed the costs of the conservation measures. The Act also authorizes a Governmental Unit to enter into an installment purchase contract or lease purchase agreement for the purchase and installation of energy or water conservation measures.
http://www.emnrd.state.nm.us/ECMD/CleanEnergyPerformanceFinancing/documents/6-23NMSA1978_000.pdf

STRUCTURE: The transaction will be structured as an Equipment Lease Purchase Agreement (the “Agreement”) between the Lessee and the Lessor. At closing, the proceeds will be deposited into an Equipment Acquisition Escrow Fund established pursuant to an Escrow Agreement (the “Escrow”) by and among the Lessee, the Lessor and the Escrow Agent. Attached is the Lessee’s preferred form of Agreement and Escrow for review by potential respondents. Please indicate in your response whether these contracts are acceptable.

EQUIPMENT: The Equipment is comprised of the following energy and water conservation measures, including the percentage of each as it relates to total Equipment costs:

1. LED lighting upgrades (19.9%)
2. Water conservation measures (3.3%)
3. Building envelope improvements (2.7%)
4. Controls upgrade migration (6.6%)
5. Solar photovoltaic array (26.5%)
6. Central plant piping modifications (6.4%)
7. Boiler redesign and replacement (18.7%)
8. Split unit replacement (6.0%)
9. CREC unit replacement (5.1%)
10. AHU replacement (4.9%)

PAYMENT OBLIGATION: The Lessee will pay Rental Payments, exclusively from legally available Guaranteed Cost Savings deposited in the Rental Payment Fund and any funds received from the financial guaranty under the Contract as is necessary to pay applicable Rental Payments. The Lessee’s obligation to make Rental Payments is subject to annual appropriation.

SECURITY: To secure the payment of all of the Lessee’s obligations under the Agreement, which are subject to the sufficiency of annual appropriation, the Lessor will retain a security interest constituting a first lien on the Equipment.

FINANCED AMOUNT: Please use the following amounts for the proposals:

| | |
|----------------------------|---------------|
| Equipment cost | \$4,797,650 |
| Less: Capital Contribution | (2,000,000) |
| Costs of issuance | <u>50,000</u> |

Financed Amount **\$2,847,650**

Note: Please also include 12 months of capitalized interest into the Financed Amount.

BANK QUALIFIED: The Lessee will designate the Agreement as a Qualified Tax Exempt Obligation pursuant to Section 265(b)(3) of the IRS Code.

FINANCING TERM: 16 years

CLOSING DATE: Estimated September 13, 2017

INTEREST RATE: The Lessee is seeking a fixed tax-exempt interest rate over the Financing Term. Please indicate the interest rate as of July 12, 2017 and provide an adjustment formula. Please also indicate how far in advance of the Closing Date the interest rate can be locked. Responses will be evaluated on the overall cost of funds.

RENTAL PAYMENTS: Please assume 2 semi-annual interest-only payments (from capitalized interest) on March 13, 2018 and September 13, 2018, followed by 30 semi-annual principal and interest payments beginning March 13, 2019 through September 13, 2033. The Lessee is seeking proposals with Rental Payments sculpted to generate level positive cashflow each year, based on Guaranteed Cost Savings. Please see the attached Sample Payment Schedule and Cashflow Analysis.

PURCHASE OPTION: Please include the applicable Purchase Price for each Rental Payment Date.

LEGAL OPINIONS: Lessee's Co-Bond Counsel will provide an opinion with respect to the legal, valid, binding and enforceable nature of the transaction (subject to customary exceptions) and an opinion in customary form and content with respect to the excludability of the interest component of Rental Payments from gross income of the Lessor for federal taxation purposes.

DIRECT LOAN: The transaction will be a direct loan with one institutional lender (the "Lessor"), arranged by the Lease Purchase Arranger. No official statement or other disclosure document will be prepared. There will be no debt service reserve, no rating, no DTC registration and no CUSIPs. The Lessor will be required to provide a Lessor Representation Letter certifying that the financing is not a security and is not being made with the present intention to resell, as well as other customary certifications.

CLOSING COSTS: The Lessee will be responsible for paying the costs related to the transaction, including: Lessee's Co-Bond Counsel, Lease Purchase Arranger, Lessor's Counsel (please provide a not to exceed amount in your proposal) and Escrow Agent. It is anticipated that these costs will be capitalized into the final financed amount. In addition to Lessor's Counsel, please identify any other Lessor related costs in your financing proposal.

PERFORMANCE

BONDS: The Lessor will be listed as a dual obligee on the payment and performance bonds provided by the Contractor. No draws from Escrow will be permitted until such bonds are in place.

CREDIT APPROVAL: It is understood that any Lessor financing proposal would be subject to credit approval and be subject to negotiation, execution and delivery of mutually acceptable documentation.

SCHEDULE: Please see the attached schedule.

PROPOSAL

SUBMITTAL: Sealed proposals are due by 2:00 MDT on July 12, 2017. Late proposals will not be accepted. Please note that Clovis, NM is not considered a guaranteed overnight delivery destination. Proposals must be clearly marked:

RFP #17-05 Equipment Lease Purchase Agreement

Please address the financing proposal to the following individual

Clovis Community College District
Annette Johnson
Director of Purchasing
417 Schepps Boulevard
Clovis, NM 88101
annette.johnson@clovis.edu
(575) 769-4042

Please send both hard copy and electronic copy to the Lessee at the address above and electronic copies to the Lease Purchase Arranger at the addresses below.

Capitalized terms used but not defined herein will have the meaning given such terms in the Act and the transaction documents (i.e., Agreement, Escrow, etc.). Please contact any of the individuals below with questions or requests for additional information. We look forward to receiving financing proposals from you.

George K. Baum & Company

Brad Angst, First Vice President
(505) 872-2320709-4963
angst@gkbaum.com

Jon Benson, Associate
(816) 283-5154
benson@gkbaum.com

Neal Skiver, Senior Vice President
(505) 204-8755391-5470
skiver@gkbaum.com

Clovis Community College, NM
Energy Performance Contracting Program
20 Year Cashflow Analysis

| Year | Utility Cost Savings | Conservation-Related Savings | Guaranteed Cost Savings (Gross) | Annual PV Degradation | Measurement & Verification | Solar Service Program | Total Annual Costs | Guaranteed Cost Savings (Net) | Annual Rental Payments | Annual Positive Cashflow | Cumulative Positive Cashflow |
|------|----------------------|------------------------------|---------------------------------|-----------------------|----------------------------|-----------------------|---------------------|-------------------------------|------------------------|--------------------------|------------------------------|
| 0 | \$ 29,148 | | \$ 29,148 | | | | | \$ 29,148 | | | |
| 1 | \$ 221,661 | \$ 49,098 | \$ 270,759 | \$ (287) | \$ (8,429) | \$ (5,170) | \$ (13,886) | \$ 256,873 | \$ 255,918 | \$ 30,103 | \$ 30,103 |
| 2 | \$ 200,237 | \$ 50,669 | \$ 250,906 | \$ (592) | \$ (8,614) | \$ (5,284) | \$ (14,490) | \$ 236,416 | \$ 206,313 | \$ 30,103 | \$ 60,206 |
| 3 | \$ 206,645 | \$ 52,291 | \$ 258,935 | \$ (914) | \$ (8,804) | \$ (5,400) | \$ (15,118) | \$ 243,817 | \$ 213,714 | \$ 30,103 | \$ 90,309 |
| 4 | \$ 213,257 | \$ 53,964 | \$ 267,221 | \$ (1,225) | \$ (8,998) | \$ (5,519) | \$ (15,741) | \$ 251,480 | \$ 221,377 | \$ 30,103 | \$ 120,412 |
| 5 | \$ 220,081 | \$ 55,691 | \$ 275,772 | \$ (1,615) | \$ (9,196) | \$ (5,640) | \$ (16,451) | \$ 259,321 | \$ 229,218 | \$ 30,103 | \$ 150,515 |
| 6 | \$ 227,124 | \$ 57,473 | \$ 284,597 | \$ (1,995) | \$ (9,398) | \$ (5,764) | \$ (17,157) | \$ 267,440 | \$ 237,337 | \$ 30,103 | \$ 180,619 |
| 7 | \$ 234,392 | \$ 59,312 | \$ 293,704 | \$ (2,396) | \$ (9,605) | \$ (5,891) | \$ (17,892) | \$ 275,812 | \$ 245,709 | \$ 30,103 | \$ 210,722 |
| 8 | \$ 241,893 | \$ 61,210 | \$ 303,102 | \$ (2,819) | \$ (9,816) | \$ (6,021) | \$ (18,656) | \$ 284,447 | \$ 254,344 | \$ 30,103 | \$ 240,825 |
| 9 | \$ 249,633 | \$ 63,169 | \$ 312,802 | \$ (3,265) | \$ (10,032) | \$ (6,153) | \$ (19,450) | \$ 293,352 | \$ 263,249 | \$ 30,103 | \$ 270,928 |
| 10 | \$ 257,621 | \$ 65,190 | \$ 322,811 | \$ (3,737) | \$ (10,253) | \$ (6,289) | \$ (20,278) | \$ 302,533 | \$ 272,430 | \$ 30,103 | \$ 301,031 |
| 11 | \$ 265,865 | \$ 67,276 | \$ 333,141 | \$ (4,232) | \$ (10,478) | \$ (15,427) | \$ (30,137) | \$ 303,004 | \$ 272,901 | \$ 30,103 | \$ 331,134 |
| 12 | \$ 274,373 | \$ 69,429 | \$ 343,802 | \$ (4,754) | \$ (10,709) | \$ (15,568) | \$ (31,031) | \$ 312,771 | \$ 282,668 | \$ 30,103 | \$ 361,237 |
| 13 | \$ 283,153 | \$ 71,651 | \$ 354,804 | \$ (5,302) | \$ (10,944) | \$ (15,713) | \$ (31,959) | \$ 322,844 | \$ 292,741 | \$ 30,103 | \$ 391,340 |
| 14 | \$ 292,214 | \$ 73,943 | \$ 366,157 | \$ (5,879) | \$ (11,185) | \$ (6,860) | \$ (23,924) | \$ 342,233 | \$ 312,130 | \$ 30,103 | \$ 421,443 |
| 15 | \$ 301,565 | \$ 76,310 | \$ 377,874 | \$ (6,381) | \$ (11,431) | \$ (7,011) | \$ (24,823) | \$ 353,051 | \$ 322,948 | \$ 30,103 | \$ 451,546 |
| 16 | \$ 311,215 | \$ 78,752 | \$ 389,966 | \$ (6,895) | \$ - | \$ (7,011) | \$ (13,906) | \$ 376,060 | \$ - | \$ 376,060 | \$ 827,607 |
| 17 | \$ 321,174 | \$ 81,272 | \$ 402,445 | \$ (7,319) | \$ - | \$ (7,011) | \$ (14,330) | \$ 388,115 | \$ - | \$ 388,115 | \$ 1,215,722 |
| 18 | \$ 331,451 | \$ 83,872 | \$ 415,323 | \$ (7,804) | \$ - | \$ (7,011) | \$ (14,815) | \$ 400,509 | \$ - | \$ 400,509 | \$ 1,616,230 |
| 19 | \$ 342,058 | \$ 86,556 | \$ 428,614 | \$ (8,244) | \$ - | \$ (7,011) | \$ (15,255) | \$ 413,359 | \$ - | \$ 413,359 | \$ 2,029,589 |
| 20 | \$ 353,003 | \$ 89,326 | \$ 442,329 | \$ (8,799) | \$ - | \$ (7,011) | \$ (15,810) | \$ 426,520 | \$ - | \$ 426,520 | \$ 2,456,109 |
| | \$ 5,377,762 | \$ 1,346,452 | \$ 6,724,214 | \$ (84,454) | \$ (147,891) | \$ (152,764) | \$ (385,109) | \$ 6,339,105 | \$ 3,882,997 | \$ 2,456,109 | |

**Clovis Community College, NM
Equipment Lease Purchase Agreement
Sample Payment Schedule and Cashflow Analysis
(15 Year Repayment Term, Level Annual Positive Cashflow)**

| | |
|---|-----------------------|
| Equipment Cost | \$ 4,796,477 |
| Less: Capital Contribution | \$ (2,000,000) |
| Capitalized Interest | \$ 103,240 |
| Costs of Issuance (estimated) | \$ 50,000 |
| Financed Amount | \$ 2,949,717 |
| | |
| Interest Rate (estimated) | 3.50% |
| | |
| Annual Positive Cashflow | \$ 30,103 |
| 15 Year Cumulative Positive Cashflow | \$ 451,546 |
| 20 Year Cumulative Positive Cashflow | \$ 2,456,109 |
| | |
| Capitalized Interest Period (months) | 12.00 |
| Financing Term (years) | 16.00 |
| Average Life (years) | 10.04 |
| | |
| Closing Date (estimated) | 9/13/17 |

Sample Rental Payment Schedule

15 Year Cashflow Analysis

| Payment No. | Payment Date | Rental Payment Amount | Interest Portion | Principal Portion | Outstanding Balance | Annual | | |
|-------------|--------------|-----------------------|---------------------|---------------------|---------------------|------------------------|-------------------------------|--------------------------|
| | | | | | | Annual Rental Payments | Guaranteed Cost Savings (Net) | Annual Positive Cashflow |
| 1 | 3/13/18 | \$ 51,620 | \$ 51,620 | \$ - | \$ 2,949,717 | | | |
| 2 | 9/13/18 | \$ 51,620 | \$ 51,620 | \$ - | \$ 2,949,717 | | | |
| 3 | 3/13/19 | \$ 127,959 | \$ 51,620 | \$ 76,339 | \$ 2,873,378 | | | |
| 4 | 9/13/19 | \$ 127,959 | \$ 50,284 | \$ 77,675 | \$ 2,795,703 | \$ 255,918 | \$ 286,021 | \$ 30,103 |
| 5 | 3/13/20 | \$ 103,156 | \$ 48,925 | \$ 54,232 | \$ 2,741,472 | | | |
| 6 | 9/13/20 | \$ 103,156 | \$ 47,976 | \$ 55,181 | \$ 2,686,291 | \$ 206,313 | \$ 236,416 | \$ 30,103 |
| 7 | 3/13/21 | \$ 106,857 | \$ 47,010 | \$ 59,847 | \$ 2,626,444 | | | |
| 8 | 9/13/21 | \$ 106,857 | \$ 45,963 | \$ 60,894 | \$ 2,565,550 | \$ 213,714 | \$ 243,817 | \$ 30,103 |
| 9 | 3/13/22 | \$ 110,688 | \$ 44,897 | \$ 65,791 | \$ 2,499,759 | | | |
| 10 | 9/13/22 | \$ 110,688 | \$ 43,746 | \$ 66,942 | \$ 2,432,816 | \$ 221,377 | \$ 251,480 | \$ 30,103 |
| 11 | 3/13/23 | \$ 114,609 | \$ 42,574 | \$ 72,035 | \$ 2,360,781 | | | |
| 12 | 9/13/23 | \$ 114,609 | \$ 41,314 | \$ 73,295 | \$ 2,287,486 | \$ 229,218 | \$ 259,321 | \$ 30,103 |
| 13 | 3/13/24 | \$ 118,668 | \$ 40,031 | \$ 78,637 | \$ 2,208,849 | | | |
| 14 | 9/13/24 | \$ 118,668 | \$ 38,655 | \$ 80,013 | \$ 2,128,835 | \$ 237,337 | \$ 267,440 | \$ 30,103 |
| 15 | 3/13/25 | \$ 122,855 | \$ 37,255 | \$ 85,600 | \$ 2,043,235 | | | |
| 16 | 9/13/25 | \$ 122,855 | \$ 35,757 | \$ 87,098 | \$ 1,956,137 | \$ 245,709 | \$ 275,812 | \$ 30,103 |
| 17 | 3/13/26 | \$ 127,172 | \$ 34,232 | \$ 92,939 | \$ 1,863,198 | | | |
| 18 | 9/13/26 | \$ 127,172 | \$ 32,606 | \$ 94,566 | \$ 1,768,632 | \$ 254,344 | \$ 284,447 | \$ 30,103 |
| 19 | 3/13/27 | \$ 131,624 | \$ 30,951 | \$ 100,673 | \$ 1,667,959 | | | |
| 20 | 9/13/27 | \$ 131,624 | \$ 29,189 | \$ 102,435 | \$ 1,565,524 | \$ 263,249 | \$ 293,352 | \$ 30,103 |
| 21 | 3/13/28 | \$ 136,215 | \$ 27,397 | \$ 108,818 | \$ 1,456,705 | | | |
| 22 | 9/13/28 | \$ 136,215 | \$ 25,492 | \$ 110,723 | \$ 1,345,982 | \$ 272,430 | \$ 302,533 | \$ 30,103 |
| 23 | 3/13/29 | \$ 136,451 | \$ 23,555 | \$ 112,896 | \$ 1,233,087 | | | |
| 24 | 9/13/29 | \$ 136,451 | \$ 21,579 | \$ 114,872 | \$ 1,118,215 | \$ 272,901 | \$ 303,004 | \$ 30,103 |
| 25 | 3/13/30 | \$ 141,334 | \$ 19,569 | \$ 121,765 | \$ 996,450 | | | |
| 26 | 9/13/30 | \$ 141,334 | \$ 17,438 | \$ 123,896 | \$ 872,553 | \$ 282,668 | \$ 312,771 | \$ 30,103 |
| 27 | 3/13/31 | \$ 146,371 | \$ 15,270 | \$ 131,101 | \$ 741,453 | | | |
| 28 | 9/13/31 | \$ 146,371 | \$ 12,975 | \$ 133,395 | \$ 608,057 | \$ 292,741 | \$ 322,844 | \$ 30,103 |
| 29 | 3/13/32 | \$ 156,065 | \$ 10,641 | \$ 145,424 | \$ 462,633 | | | |
| 30 | 9/13/32 | \$ 156,065 | \$ 8,096 | \$ 147,969 | \$ 314,664 | \$ 312,130 | \$ 342,233 | \$ 30,103 |
| 31 | 3/13/33 | \$ 161,474 | \$ 5,507 | \$ 155,967 | \$ 158,697 | | | |
| 32 | 9/13/33 | \$ 161,474 | \$ 2,777 | \$ 158,697 | \$ 0 | \$ 322,948 | \$ 353,051 | \$ 30,103 |
| | | \$ 3,986,237 | \$ 1,036,520 | \$ 2,949,717 | | \$ 3,882,997 | \$ 4,334,543 | \$ 451,546 |

**CLOVIS COMMUNITY COLLEGE DISTRICT, NEW MEXICO
EQUIPMENT LEASE PURCHASE AGREEMENT
LEASE FINANCING - 2017**

CALENDAR OF EVENTS

| May | | | | | | |
|-----|----|----|----|----|----|----|
| S | M | T | W | T | F | S |
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | 31 | | | |

| June | | | | | | |
|------|----|----|----|----|----|----|
| S | M | T | W | T | F | S |
| | | | | 1 | 2 | 3 |
| 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | |

| July | | | | | | |
|------|----|----|----|----|----|----|
| S | M | T | W | T | F | S |
| | | | | | | 1 |
| 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | 31 | | | | | |

| August | | | | | | |
|--------|----|----|----|----|----|----|
| S | M | T | W | T | F | S |
| | 1 | 2 | 3 | 4 | 5 | |
| 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | 31 | | |

| September | | | | | | |
|-----------|----|----|----|----|----|----|
| S | M | T | W | T | F | S |
| | | | | | 1 | 2 |
| 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |

| Month | Completion Date | Event | Responsible Parties ¹ |
|------------------|---------------------|---|----------------------------------|
| May | May 26, 2017 | First Draft RFP distributed | GKB |
| | May 31, 2017 | Agenda deadline for Clovis Community College Board of Trustees (approve RFP) | E, GKB |
| June | Jun 07, 2017 | Approval to issue RFP from the Board | E |
| | Jun 21, 2017 | Issue RFP | GKB |
| July | Jul 10, 2017 | Final documents submittal deadline to HED Capital Projects Committee | E, GKB, O, LC, HED |
| | Jul 12, 2017 | Response for RFP due | GKB |
| | Jul 14, 2017 | Select Lessor | E, GKB, O |
| | Jul 14, 2017 | Begin document negotiations and lessor credit approval process | E, GKB, O, LC |
| | Jul 24, 2017 | Final documents submittal deadline to the Board of Trustees | E, GKB, O, LC |
| August | Aug 02, 2017 | Board of Trustees meeting | E |
| | Aug 09, 2017 | HED Capital Projects Committee meeting | HED |
| | Aug 11, 2017 | Publication of Notice of Adoption | E |
| September | Sep 06, 2017 | Rate lock | E, GKB, O |
| | Sep 13, 2017 | Closing | E, GKB, O, LC, EA, HED, C |

*actions or meetings of Board of Trustees and Projects Committee meetings

- ¹Key:
- E = Lessee, Clovis Community College
 - LC = Lessee's Counsel, Cuddy & McCarthy, LLP
 - GKB = Lease Purchase Arranger, George K. Baum & Company
 - O = Lessor, TBD
 - EA = Escrow Agent, TBD
 - C = Contractor, Siemens Industry, Inc.
 - HED = New Mexico Higher Education Department

EQUIPMENT LEASE PURCHASE AGREEMENT

THIS EQUIPMENT LEASE PURCHASE AGREEMENT (the “Agreement”), is dated as of [Dated Date], between _____, a national banking association organized and existing under the laws of the United States of America, as Lessor (“Lessor”), and **CLOVIS COMMUNITY COLLEGE DISTRICT**, a political subdivision existing under the laws of the State of New Mexico, as Lessee (“Lessee”), (collectively, “parties”), 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:

All words and phrases capitalized but not defined herein, shall have the meaning defined in the Contract No. _____ for Energy Performance Contracting dated _____, 2017 between Clovis Community College and _____. (“Energy Performance Contract”). In addition, the following terms, except where the context indicates otherwise, shall have the meanings in this Agreement.

“**Act**” means the Public Facility Energy Efficiency and Water Conservation Act, NMSA 1978, §§ 6-23-1 et seq. (2009), as amended.

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

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

“**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 Equipment is accepted by Lessee in the manner described in **Section 13** or (ii) the date on which the Lease Funding Proceeds are deposited for that purpose in the Escrow Fund, if any.

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

“**Escrow Fund**” means the fund established as provided in the Escrow Agreement attached as “**Exhibit D**” hereto.

“**Energy Performance Contract**” means the Contract No. _____ for Energy Performance Contracting dated _____, 2017, between Lessee and _____.

“**Event of Default**” means an Event of Default described in **Section 37**.

“**Guaranteed Cost Savings**” means the anticipated “utility costs savings” and “conservation-related cost savings”, as such terms are defined in the Act, and that will be saved by Lessee as a result of the Energy Performance Contract, as set forth on **Exhibit C** hereto.

“Interest Component” shall have the definition set forth in **Sections 3 and 11**.

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

“Lease Funding Proceeds” means the funds provided by Lessor equal to the aggregate of the principal component of each Rental Payment to Lessee to acquire, install and purchase the Equipment.

“Lease Term” means the Original Term and all Renewal Terms, but ending on the occurrence of the earliest event specified in **Section 6**.

“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.

“Maximum Lease Term” means the Original Term and all Renewal Terms through the Renewal Term including the last Rental Payment Date set forth on the Payment Schedule; provided that in no event shall the Maximum Lease Term exceed twenty-five (25) years.

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

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

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

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

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

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

“Rent Payment Fund” means the special fund established by Lessee for the deposit of budgeted funds equal to the Guaranteed Cost Savings from the acquisition, installation and performance of the Equipment and such other authorized revenues as are permitted by the Act and pledged for Rental Payments, subject to **Sections 6 through 8 and Section 10**.

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

“**State**” means the State of New Mexico

“**Vendor**” means the manufacturer(s) of the Equipment as well as the agents or dealers of the manufacturer(s) from whom Lessor purchased or is purchasing the Equipment, 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 political subdivision duly organized and existing under the constitution and laws of the State. Lessee will do or cause to be done all things permitted by law to preserve and keep in full force and effect its existence as a political subdivision. So long as the Agreement continues in effect, Lessee shall use its best efforts to comply with its enabling legislation and other laws to which it is subject. Lessee 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.

(b) Subject to the approval of the New Mexico Higher Education Department, Lessee is authorized under the constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.

(c) 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 and equitable principles whether considered at law or equity.

(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, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to make the Rental Payments scheduled to come due during the Original Term and to meet its other obligations for the Original Term, and such funds have not been expended for other purposes.

(g) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder.

(h) There is no action, suit, or proceeding, at law or in equity, before or by any court, pending against Lessee, nor to the actual 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 or properties of Lessee.

(i) 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.

(j) 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 Equipment 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.

(k) The Equipment 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 Equipment, which need is not temporary or expected to diminish in the foreseeable future. The Equipment 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.

(l) Lessee has never failed to pay payments coming due under any bond issue, lease purchase agreement or other indebtedness obligation of Lessee.

(m) Lessee reasonably anticipates that the useful life of the Equipment will not be less than the Maximum Lease Term.

(n) 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, if any, and Lessee has experienced no material change in its financial condition since the date(s) of such information.

(o) Lessee has provided Lessor with audited financial statements through June 30, 2016. Lessee has experienced no material change in its financial condition since _____, 2017.

(p) Lessee will pay the excess (if any) of the actual costs of acquiring the Equipment under the Agreement over the Lease Funding Proceeds deposited by Lessor in the Escrow Fund, if any, established under any related escrow agreement and interest earnings thereon.

(q) Lessee will, upon request of Lessor and at Lessor's expense, assist Lessor in obtaining a current rating on the payment obligations of Lessee under the Agreement from a nationally recognized securities rating organization selected by Lessor.

(r) Lessee has established or will have established as of the Commencement Date, the Rent Payment Fund in accordance with the Act for the purpose of paying the Rent Payments.

Section 3. Tax Covenants Related to this Agreement. Lessee and, to the extent applicable, Lessor covenant to each other, to take any action necessary to assure, or to refrain from any action which would adversely affect, the treatment of the interest component of the Rental Payment (the “Interest Component”) to be made pursuant to this Agreement as an obligation described in section 103 of the Code, the interest on which is not includable in the “gross income” of the holder for purposes of federal income taxation. In furtherance thereof, Lessee and, to the extent applicable, Lessor, covenant to each other as follows:

(a) to take any action to assure that no more than ten percent (10%) of the Lease Funding Proceeds relating to this Agreement or the Equipment financed therewith (less amounts deposited to a reserve fund, if any) are used for any “private business use,” as defined in section 141(b)(6) of the Code or, if more than ten percent (10%) of such proceeds or such projects financed therewith are so used, to assure that such amounts, whether or not received by Lessee, with respect to such private business use, do not, under the terms of this Agreement or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than ten percent (10%) of the Rental Payments due under this Agreement, in contravention of section 141(b)(2) of the Code;

(b) to take any action to assure that in the event that the “private business use” described in subsection (a) hereof exceeds five percent (5%) of the Lease Funding Proceeds relating to this Agreement or the Equipment financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of five percent (5%) is used for a “private business use” which is “related” and not “disproportionate,” within the meaning of section 141(b)(3) of the Code, to the governmental use;

(c) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or five percent (5%) of the Lease Funding Proceeds related to this Agreement (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(d) to refrain from taking any action which would otherwise result in the portion of this Agreement related to the Payments being treated as a “private activity bond” within the meaning of section 141(b) of the Code;

(e) to refrain from taking any action that would result in this Agreement being “federally guaranteed” within the meaning of section 149(b) of the Code;

(f) to refrain from using any portion of the Lease Funding Proceeds related to this Agreement, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code), which produces a materially higher yield over the term of this Agreement, other than investment property acquired with:

(A) Lease Funding Proceeds of this Agreement invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 30

days or less until such proceeds are needed for the purpose for which this Agreement is issued;

(B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148 1(b) of the Treasury Regulations; and

(C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed ten percent (10%) of the Lease Funding Proceeds of this Agreement.

(g) Lessee shall deposit in the Rebate Fund for the benefit of the United States of America at least once during each five-year period (beginning on the date of delivery of this Agreement), and no later than the fifth anniversary of such date of delivery, an amount that is at least equal to ninety percent (90%) of the "Excess Earnings," within the meaning of section 148(f) of the Code and Lessee shall pay to the United States of America, not later than 60 days after this Agreement have been paid in full, one hundred percent (100%) of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code; and

(h) to maintain such records as will enable Lessor and Lessee to fulfill their respective responsibilities under this Section and section 148 of the Code and to retain such records for at least six years following the final payment of the Rental Payments under this Agreement.

In order to facilitate compliance with the above subsections (g) and (h), a "Rebate Fund" shall be established within the Rental Payment Fund by Lessee for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without limitation Lessor. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

Lessor and (this is a bi-lateral contract regarding the proceeds) Lessee understand that the term "Lease Funding Proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the Closing Date of this Agreement. It is the understanding of Lessor and Lessee that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to this Agreement, Lessor and Lessee will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of the Rental Payments under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated that impose additional requirements that are applicable to this Agreement, Lessor and Lessee agree to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of the Rental Payments under section 103 of the Code. In furtherance of such intention, Lessor and Lessee's President or Vice President of Administrative Services hereby authorizes and directs a duly authorized representative of Lessor and Lessee, respectively, to execute any documents, certificates or reports required by the Code

and to make such elections, on behalf of Lessor and Lessee, which may be permitted by the Code.

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

Section 5. Lease Term. The Original Term of this Agreement will commence on the Commencement Date and will terminate on the last day of Lessee's current fiscal year. The Lease Term may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for an additional Renewal Term up to the Maximum Lease Term. At the end of the Original Term and at the end of each Renewal Term until the Maximum Lease Term has been completed, Lessee will be deemed to have exercised its option to continue this Agreement for the next Renewal Term unless Lessee has terminated this Agreement pursuant to **Section 6** or **Section 31**. The terms and conditions during any Renewal Term will be the same as the terms and conditions during the Original Term, except that the Rental Payments will be as provided in the Payment Schedule.

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

- (a) the expiration of the Original Term or any Renewal Term of this Agreement and the nonrenewal of this Agreement in the event of nonappropriation of funds pursuant to **Section 8**;
- (b) the exercise by Lessee of the option to purchase the Equipment under the provisions of **Section 31** and payment of the Purchase Price and all amounts payable in connection therewith;
- (c) a default by Lessee and Lessor's election to terminate this Agreement under **Section 38**; or
- (d) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder during the Maximum Lease Term.

Section 7. Continuation of Lease Term. Lessee currently intends, subject to the provisions of **Section 8** and **Section 12**, to continue the Lease Term through the Original Term and all of the Renewal Terms and to pay the Rental Payments hereunder. Lessee reasonably and currently believes that legally available funds in an amount sufficient to make all Rental Payments during the Original Term and each of the Renewal Terms can be obtained. Lessee agrees to include within its draft annual budget for a particular fiscal year (i) an item equal to the Guaranteed Cost Savings for such fiscal year or (ii) alternatively, an [item equal to the utility costs of Lessee, without giving effect to any of the anticipated Guaranteed Cost Savings]; provided, however, the submission of such budget as required by law shall not prevent the Lessee from adopting a final annual budget for such fiscal year that does not appropriate amounts for any Rental Payments as contemplated in this Agreement, including **Section 8**.

Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend this Agreement for any Renewal Term is solely within the discretion of the then current governing body of Lessee.

Section 8. Nonappropriation. Lessee is obligated only to pay Rental Payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. In the event sufficient funds will not be appropriated or are not otherwise legally available to pay the Rental Payments required to be paid in the next occurring Renewal Term, as set forth in the Payment Schedule, this Agreement will be deemed to be terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least 90 days prior to the end of the then current Original Term or Renewal Term, but failure to give such notice will not extend the Lease Term beyond such Original Term or Renewal Term. Notwithstanding anything to the contrary in this Agreement, if this Agreement is terminated in accordance with this Section, Lessee agrees, at Lessee's cost and expense, to peaceably deliver the Equipment to Lessor at the location or locations specified by Lessor.

Section 9. Rental Payments. Lessee will pay Rental Payments, exclusively from legally available Guaranteed Cost Savings deposited in the Rental Payment Fund and any funds received from the financial guaranty under the Energy Performance Contract as is necessary to pay applicable Rental Payments, 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 Equipment during the fiscal year in which such payments are due. Lessee hereby pledges the amount in the Rental Payment Fund to the payment of all amounts due hereunder.

Section 10. Guaranteed Cost Savings as Special Funds of Lessee; Rent Payment Fund; Rental Payments to Constitute a Current Expense of Lessee.

(a) The Guaranteed Cost Savings deposited into the Rent Payment Fund are special revenues of Lessee. All Rental Payments, and interest thereon, if any, shall be special, limited obligations of Lessee and shall be payable and collectible solely from the Guaranteed Cost Savings appropriated and pledged in the Rent Payment Fund. Provided Lessee has appropriated the Guaranteed Cost Savings in any particular fiscal year, Lessee shall deposit into the Rent Payment Fund any funds received from the financial guaranty under the Energy Performance Contract as is necessary to pay applicable Rental Payments. Lessor may not look to any general funds or other funds for the payment of the principal of or interest on such obligations, except the designated special funds deposited into the Rent Payment Fund pledged therefor. Neither this Agreement nor the Rental Payments shall constitute an indebtedness or a debt of Lessee or the State within the meaning of any constitutional or statutory provision or limitation, nor shall they be considered or held to be general obligations of Lessee or the State. Lessor and its assigns may not look to any general or other fund for the payment of the lease obligations under this Agreement.

(b) The obligation of Lessee to pay Rental Payments hereunder will constitute a current expense of Lessee, is from year to year and does not constitute a mandatory payment

obligation of Lessee in any fiscal year beyond the then current fiscal year of Lessee, as provided in **Section 8**.

(c) Notwithstanding anything in this Agreement to the contrary, in any fiscal year amounts in the Rent Payment Fund equal the aggregate Rental Payments due in such fiscal year, Lessee may withdraw any excess amounts which may be used for any lawful purpose of Lessee.

Section 11. Interest Component. As set forth on the Payment Schedule, the Interest Component of each Rental Payment is paid as, and represents payment of, interest.

Section 12. Rental Payments to be Unconditional. Except as provided in **Sections 6** through **8** and **10** the obligations of Lessee 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 Equipment to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the equipment or any accident, condemnation or unforeseen circumstances.

Section 13. Delivery, Installation and Acceptance of the Equipment. Lessee will order the Equipment, cause the Equipment to be delivered and installed at the locations specified on **Exhibit A**, pursuant to the Energy Performance Contract, and pay any and all delivery and installation costs in connection therewith. When the Equipment has been delivered and installed, Lessee will immediately accept the Equipment, subject to the provisions of the New Mexico Procurement Code, NMSA 1978, §§ 13-1-1, et seq. and Section 6 of the Energy Performance Contract and evidence said acceptance by executing and delivering to Lessor an acceptance certificate in form and substance acceptable to Lessor. After it has been installed, the Equipment 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 Equipment. Lessor hereby covenants to provide Lessee with quiet use and enjoyment of the Equipment during the Lease Term, and Lessee will peaceably and quietly have and hold and enjoy the Equipment during the Lease Term, without suit, trouble or hindrance from Lessor, except as otherwise expressly set forth in this Agreement.

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

Section 16. Use of the Equipment. Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee will obtain all permits and licenses, if any, necessary for the installation and operation of the Equipment. 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 Equipment) 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 Equipment or its interest or rights under this Agreement.

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

Section 18. Title to the Equipment. During the Lease Term, title to the Equipment 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 Equipment to Lessor upon (a) any termination of this Agreement other than termination pursuant to **Section 31** 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 Lessor's written notice of termination to Lessee 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 Equipment 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 Equipment 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 Equipment.

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 Escrow 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. Lessor and Lessee agree that the Equipment is and will remain personal property until all payments under this Agreement have been made. The Equipment will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to such real estate or any building thereon. Upon the request of Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

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

Section 22. Insurance. At its own expense, Lessee will maintain (a) casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor in an amount at least equal to the then applicable Purchase Price of the Equipment, (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 cause Vendor to provide to Lessor a payment and performance bond naming Lessor as a dual obligee with Lessee and issued by a surety company rated "A" or better by AM Best. All insurance proceeds from casualty losses will be payable as hereinafter provided. 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 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 Equipment 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 on the thereof, pay such taxes and charges and make such Equipment repairs or replacements as are necessary and pay the cost thereof. All amounts so advanced by Lessor will become additional rent for the then current Original Term or Renewal Term. Lessee agrees to pay such amounts with interest thereon from the date paid at the rate of [_____ percent (___%)] per annum or the maximum permitted by law, whichever is less.

Section 24. Financial Information. Within 180 days after the end of each fiscal year, Lessee will provide Lessor with current financial statements, budgets, proofs of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may be reasonably requested by Lessor.

Section 25. Release and Indemnification. Only to the extent expressly permitted by law and subject to the limitations and immunities of the New Mexico Constitution and New Mexico Tort Claims Act, NMSA 1978 §§ 41-4-1, et seq., Lessee will indemnify, protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith (including, without limitation, reasonable counsel fees, as approved by a court of competent jurisdiction, and expenses and any federal income tax and interest and penalties connected therewith imposed on interest received) arising out of or as the result of (a) the entering into this Agreement. (b) the ownership of any item of the Equipment, (c) the manufacturing, ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or retention of any item of the Equipment, (d) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury or death to any person or (e) the breach of any covenant herein or any material misrepresentation contained herein. The indemnification arising under this paragraph will continue in full force and effect until termination of this Agreement

Section 26. Risk of Loss. Lessee assumes, from and including the Commencement Date, all risk of loss of or damage to the Equipment from any cause whatsoever. No such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof will relieve 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 Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Equipment or any part thereof or the interest of Lessee or Lessor in the Equipment or any part thereof will be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, 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 Equipment, unless Lessee has exercised its option to purchase the Equipment 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 Equipment 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 Equipment 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**.

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 EQUIPMENT 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 EQUIPMENT OR SERVICES PROVIDED FOR IN THIS AGREEMENT.

Section 30. Vendor's Warranties. Lessee may have rights under the contract evidencing the purchase of the Equipment; 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, without the need for further action, 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 Equipment 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. Lessee will have the option to purchase the Equipment, upon giving written notice to Lessor at least 30 days before the date of purchase, at the following times and upon the following terms:

(a) On any Rental Payment Date, 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

(b) 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 Equipment, 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 (i) 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 (ii) 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.

Upon the exercise of the option to purchase set forth above, title to the Equipment will be vested in Lessee without the need for further action, free and clear of any claim by or through Lessor.

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

Section 33. Assignment by Lessor. Lessor's interest in, to and under this Agreement and the Equipment may be assigned and reassigned in whole or in part to one or more assignees by Lessor without the necessity of obtaining the consent of Lessee; provided that any assignment will not be effective against Lessee until (a) Lessee has received written notice of the name and address of the assignee and (b) in the event that such assignment is made to a bank or trust company for holders of certificates representing interests in this Agreement, such bank or trust company agrees to maintain, or cause to be maintained, a register by which a record of the names and addresses of such holders as of any particular time is kept and agrees, upon request of Lessee, to furnish such information to Lessee. Lessee will retain all such notices as a register of all assignees and will make all payments to the assignee or assignees designated in such register. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Lessor, or any assignee to protect its interest in the Equipment and in this Agreement and agrees to the filing of financing statements with respect to the Equipment and this Agreement. Lessee will not have the right to and will not assert against any assignee any claim, counterclaim, defense, set-off or other right Lessee may have against Lessor (other than rights Lessee may have against assignee as successor Lessor).

Section 34. Assignment and Subleasing by Lessee. None of Lessee's right, title and interest in, to and under this Agreement and the Equipment may be assigned or encumbered by Lessee for any reason, except that Lessee may sublease all or part of the Equipment 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 Equipment will be subject to this Agreement and the rights of Lessor in, to and under this Agreement and the Equipment.

Section 35. Disposition of Equipment. Lessee covenants that the Equipment will not be sold or otherwise disposed of in a transaction resulting in the receipt by Lessee of cash or other compensation, unless any action taken in connection with such disposition will not adversely affect the tax-exempt status of this Agreement. For purposes of the foregoing, Lessee may rely on an opinion of nationally-recognized bond counsel that the action taken in connection with such sale or other disposition will not adversely affect the status, for federal income tax purposes, of the Interest Component of any Rental Payment. For purposes of the foregoing, any portion of the Equipment comprising personal property, ancillary to the Equipment as a whole, and disposed of in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, Lessee shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the Interest Component of any Rental Payment.

Section 36. Allocation of, and Limitation on, Expenditures for the Project. Lessee covenants to account for the expenditure of Lease Funding Proceeds and investment earnings to be used for the Equipment on their books and records by allocating such proceeds to expenditures within 18 months of the later of the date that (a) the expenditure is made, or (b) the Equipment is acquired. The foregoing notwithstanding, the Lessee shall not expend the Lease Funding Proceeds or investment earnings thereon more than 60 days after the earlier of (a) the fifth anniversary of the delivery of this Agreement, or (b) the date this Agreement is terminated, unless Lessee obtains an opinion of nationally-recognized bond counsel that such expenditure will not adversely affect the status, for federal income tax purposes, of this Agreement or the interest component of any Rental Payment. For purposes hereof, Lessee shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the Interest Component of any Rental Payment.

Section 37. Events of Default Defined. Subject to the provisions of **Section 8**, 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 37(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 cannot be cured within a reasonable period of time and 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 38. Remedies on Default. Whenever any Event of Default by Lessee 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 such principal portions of Rental Payments and all other amounts as are payable by Lessee hereunder to the end of the then current Original Term or Renewal Term and such interest portions of Rental Payments accrued to the actual payment date to be due;

(b) On termination of this Agreement, Lessor may peaceably enter the premises where the Equipment is located and retake possession of the Equipment or require Lessee at Lessee's expense to promptly return any or all of the Equipment to the possession of Lessor at a place reasonably specified by Lessor; and

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

In addition, to the extent expressly permitted by State law, Lessee will remain liable for all legal fees and other costs and expenses, including court costs, incurred by Lessor and approved by a court of competent jurisdiction with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

Section 39. 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 40. WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN RESOLVING ANY CLAIM OR COUNTERCLAIM RELATING TO OR ARISING OUT OF THIS AGREEMENT.

Section 41. 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 42. 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 43. 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 44. Entire Agreement. This Agreement constitutes the entire agreement between Lessor and Lessee.

Section 45. 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 46. 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 47. 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 48. Applicable Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State, without reference to such state's conflict of laws. Venue shall lie in the Ninth (9th) Judicial District, Curry County, New Mexico.

Section 49. 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 50. 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).

SIGNATURE PAGES FOLLOW

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.

By: _____

Name:

Title:

Address:

**CLOVIS COMMUNITY COLLEGE
DISTRICT**

By: _____

Mr. Arnold Martinez
Chairman, Board of Trustees,
417 Schepps Blvd.
Clovis, New Mexico 88101

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 _____ to _____.

DATED: [Dated Date].

By: _____
Name: _____
Title: _____

**EXHIBIT A TO
EQUIPMENT LEASE PURCHASE AGREEMENT**

EQUIPMENT SCHEDULE

Equipment Description:

Energy savings improvements set forth in the Contract No. _____ for Energy Performance Contracting dated _____, 2016, between Lessee and _____, as described in and at the locations listed therein, 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 "Schedule 1 - Scope of Work Schedule" attached hereto for a further description of the Equipment.

Locations: The Equipment will be located at the following locations:

| |
|--|
| Please provide addresses for these facilities and add any other locations where the energy savings improvements will be installed. |
|--|

Vendor:

The Vendor for the Equipment is _____
_____.

This Equipment Schedule shall be deemed to be supplemented by the descriptions of the Equipment included in the Certificate of Acceptance and Payment Requests submitted to _____, as escrow agent, pursuant to the Escrow Agreement dated as of [Dated Date], among Lessor, Lessee and Bank of Albuquerque, as escrow agent, which descriptions shall be deemed to be incorporated herein

**EXHIBIT B TO
EQUIPMENT LEASE PURCHASE AGREEMENT**

PAYMENT SCHEDULE

Principal Amount: \$[Principal Amount]

Interest Rate: _____%

Commencement Date: [Dated Date]

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

| <u>Rental Payment Date</u> | <u>Rental Payment Total</u> | <u>Interest Portion</u> | <u>Principal Portion</u> | <u>Purchase Price</u> |
|--------------------------------|---------------------------------|-----------------------------|------------------------------|---------------------------|
|--------------------------------|---------------------------------|-----------------------------|------------------------------|---------------------------|

**CLOVIS COMMUNITY COLLEGE
DISTRICT**

By: _____

Mr. Arnold Martinez
Chairman, Board of Trustees,
417 Schepps Blvd.
Clovis, New Mexico 88101

**EXHIBIT C TO
EQUIPMENT LEASE PURCHASE AGREEMENT**

GUARANTEED COST SAVINGS

[To be attached.]

**EXHIBIT D TO
EQUIPMENT LEASE PURCHASE AGREEMENT
ESCROW AGREEMENT**

[To be attached.]

ESCROW AGREEMENT FOR PROCEEDS OF SALE AND DELIVERY OF LEASE PURCHASE EQUIPMENT PURSUANT TO EQUIPMENT LEASE PURCHASE AGREEMENT BY AND AMONG _____, CLOVIS COMMUNITY COLLEGE AND BOKF, N.A., AS ESCROW AGENT

This ESCROW AGREEMENT FOR PROCEEDS OF SALE AND DELIVERY OF LEASE PURCHASE EQUIPMENT PURSUANT TO EQUIPMENT LEASE PURCHASE AGREEMENT BY AND AMONG _____, CLOVIS COMMUNITY COLLEGE DISTRICT AND BOKF, N.A., AS ESCROW AGENT (the "Escrow Agreement"), dated _____, 2017, is entered into by and among Clovis Community College District, 417 Schepps Blvd., Clovis, New Mexico, 88101 (the "Lessee"); Sterling National Bank, a national banking association, 1412 Broadway, 7th Floor, New York, New York, 10018, Attention: NYC Team 114 (the "Lessor"); and BOKF, N.A., as Escrow Agent (the "Escrow Agent"), with an address of 100 Sun Avenue NE, Suite 500, Albuquerque, New Mexico 87109.

RECITALS

WHEREAS, the Lessor and the Lessee entered into an Equipment Lease Purchase Agreement, dated as of _____, 2017 ("Agreement") evidencing the lease purchase by Lessee of certain equipment and improvements (the "Equipment") from the Lessor in the principal amount of \$ _____; and

WHEREAS, the Lessee and the Lessor have agreed that the proceeds of the Agreement to be used for (a) acquisition of the Equipment, (b) payment of the interest portion of rental payments under the Agreement as they become due representing capitalized interest and (c) payment of certain costs of issuance relating to the Agreement ("Proceeds") shall be deposited with the Escrow Agent in a pooled, but separate equipment acquisition escrow fund (the "Equipment Acquisition Escrow Fund"), in which the Proceeds held on behalf of the Lessee will be segregated from any funds held by the Escrow Agent; and

WHEREAS, the Lessee and the Lessor have agreed that distributions of Proceeds from the Equipment Acquisition Escrow Fund shall be made to the Lessee in accordance with this Escrow Agreement; and

WHEREAS, capitalized terms used but not defined herein shall have the meaning set forth in the Agreement; provided, however, that incorporation of such definitions shall in no way indicate that the Escrow Agent is a party to or bound by the Agreement. A copy of the Agreement definitions shall be furnished to the Escrow Agent at the time of execution of this Escrow Agreement, and the Escrow Agent shall be entitled to conclusively rely on such copy for such definitions;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto mutually undertake, promise and agree for themselves, their respective representatives and successors, as follows:

1. EQUIPMENT ACQUISITION ESCROW FUND.

a. Upon the closing date of the Agreement, the Lessor shall deposit the Proceeds of the Agreement to the Equipment Acquisition Escrow Fund established in accordance with this Escrow Agreement and maintained by the Escrow Agent in which the Proceeds will be held for the benefit and use of the Lessee and Lessor. Once deposited in the Equipment Acquisition Escrow Fund, the Proceeds shall not be commingled with any other proceeds or funds held by the Escrow Agent for the Lessee, provided, however, that nothing in this Escrow Agreement, shall prohibit the Escrow Agent from investing the Proceeds.

b. The Equipment Acquisition Escrow Fund shall not be subject to warrants, drafts or checks drawn by the Lessee or the Lessor but shall be disbursed solely as set out in Section 5 of this Escrow Agreement. The Escrow Agent shall provide to the Lessor, and the Lessee an accounting of the Proceeds held on behalf of the Lessee in the Equipment Acquisition Escrow Fund upon request.

c. The Proceeds received by the Escrow Agent under this Escrow Agreement shall not be considered as a banking deposit by the Lessee, and the Escrow Agent shall have no right to title with respect thereto except as Escrow Agent under the terms of this Escrow Agreement. The Escrow Agent shall be subject to all state and federal law requirements governing the deposit of the Proceeds received from the issuance and sale of tax exempt obligations of the Lessee.

d. To the limited extent required to perfect the security interest granted by the Lessee to the Lessor in the cash and negotiable instruments from time to time comprising the Equipment Acquisition Escrow Fund, the Lessor hereby appoints the Escrow Agent as its security agent, and the Escrow Agent hereby accepts the appointment as security agent and agrees to hold physical possession of such cash and negotiable instruments on behalf of the Lessor. The Lessor warrants and the Lessee agrees that the Equipment Acquisition Escrow Fund is not subject to any lien or security interest created by the Agreement except as provided in Section 19 of the Agreement. The Lessee expressly acknowledges and agrees that its use of the moneys held in the Equipment Acquisition Escrow Fund is subject to the requirements and restrictions set forth in the Agreement.

2. CONTROL OF THE EQUIPMENT ACQUISITION ESCROW FUND. The Escrow Agent shall comply with the written instructions provided by the Lessor and the Lessee jointly directing the distribution of funds from the Equipment Acquisition Escrow Fund. The Escrow Agent shall not, except as permitted in this Escrow Agreement, comply with instructions or other directions concerning the Equipment Acquisition Escrow Fund or the disposition of funds in the Equipment Acquisition Escrow Fund unless directed by an order of a court of competent jurisdiction.

3. ESCROW AGENT'S RESPONSIBILITY. Except for acting on third-party instructions in violation of Section 2 above, the Escrow Agent shall have no responsibility or liability to the Lessee for complying with instructions concerning the Equipment Acquisition Escrow Fund from the Lessor and the Lessee consistent with this Escrow Agreement and shall

have no responsibility to investigate the appropriateness of any such instruction, even if the Lessee notifies the Escrow Agent that the Lessor is not legally entitled to originate any such instruction.

4. **INDEMNITY**. Solely to the extent expressly permitted by law, the Lessee hereby agrees to indemnify and hold harmless the Escrow Agent and the Lessor, its directors, officers, agents and employees against any and all claims, causes of action, liabilities, lawsuits, demands and damages, including without limitation, any and all court costs and reasonable attorneys' fees, in any way related to or arising out of or in connection with this Escrow Agreement or any action taken or not taken pursuant hereto, except to the extent caused by the Escrow Agent's or the Lessor's gross negligence or willful misconduct or the Escrow Agent's or the Lessor's breach of any of the provisions hereof. The obligations of the Lessee under this Section 4 shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent.

5. **DISBURSEMENTS FROM THE EQUIPMENT ACQUISITION ESCROW FUND**. The Lessor and the Lessee hereby authorize the Escrow Agent to take the following actions with respect to the Escrow Fund:

a. Pay from the Equipment Acquisition Escrow Fund to the Lessor interest on the Agreement as it becomes due representing capitalized interest from the date of the execution and delivery hereof, on the following dates and amounts, upon payment instructions provided by the Lessor to the Escrow Agent:

| <u>Date</u> | <u>Amount</u> |
|---------------|---------------|
| ___/___/2017 | \$ _____ |
| ___/___/201__ | _____ |
| ___/___/201__ | _____ |

b. From time to time, pay from the Equipment Acquisition Escrow Fund to the vendor or manufacturer of the Equipment, or the Lessee or other payee upon receipt of the following: (a) a duly executed Requisition in substantially the form attached as **Exhibit A** to this Escrow Agreement, which is signed by an Authorized Officer of the Lessee and approved for payment by the Lessor, (b) the vendor(s) or manufacturer(s) invoice(s) specifying the acquisition price of the Equipment described in the Requisition, (c) in the event that certain costs of entering into the Agreement are described in the Requisition, invoice(s), budget(s), closing statement(s) or other additional documentation specifying the amount(s) of such costs, and (d) any additional documentation required by the Lessor prior to the Lessor's approval of such Requisition. The approval of each Requisition by the Lessor shall constitute unto the Escrow Agent an irrevocable determination that all conditions precedent to the payment of the specified amounts from the Equipment Acquisition Escrow Fund have been completed. The Lessor's approval on the Requisition in each case shall be conclusive evidence that all invoices, budgets, closing statements and any additional documentation requirements have been received by and are acceptable to the Lessor for payment purposes. The Lessor shall deliver the approved Requisition to the Escrow Agent within two (2) business days of its receipt by the Lessor. Without limiting the foregoing, the Lessor shall not 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 as a dual obligee and issued by a surety company rated “A” or better by AM Best in form and substance satisfactory to the Lessor.

If the Lessor determines in its sole and reasonable discretion that a Requisition does not satisfy the criteria set out in Section 5(b) of this Escrow Agreement, the Lessor shall notify the Lessee of any deficiencies within one (1) business day of receipt thereof. In response, the Lessee may provide the Lessor with additional supporting documentation or an opinion (“Opinion”) of nationally recognized bond counsel addressed to the Lessor that the supporting documentation is sufficient for the tax-exempt purposes of the Agreement and that the Proceeds requisitioned will be used for the Equipment. Upon receipt of such additional supporting documentation sufficient to support compliance with the Code applicable to the Agreement and receipt of an opinion of nationally recognized bond counsel that the supporting documentation is sufficient for the tax exempt purposes of the Agreement, the Lessor shall approve the Requisition.

6. INVESTMENT OF FUNDS. Money on deposit in the Equipment Acquisition Escrow Fund held by the Escrow Agent and created hereunder shall be invested at the written direction of the Lessee by the Escrow Agent for the benefit of the Lessee as permitted by applicable State law. Except for amounts of Proceeds subject to rebate under the Code, earnings on the Equipment Acquisition Escrow Fund, if any, shall be held and administered in the Equipment Acquisition Escrow Fund and utilized in the same manner as the other moneys on deposit therein for the benefit of the Lessee. Interest or other amounts earned and received by the Escrow Agent with respect to the Equipment Acquisition Escrow Fund shall be deposited in and comprise a part of the Equipment Acquisition Escrow Fund.

7. UNEXPENDED FUNDS. Any Proceeds remaining unexpended in the Equipment Acquisition Escrow Fund after completion of the Equipment and after the final accounting has been submitted to and approved by the Lessor shall first, be applied to all reasonable fees and expenses incurred by the Escrow Agent in connection herewith as evidenced by its statement forwarded to the Lessor and the Lessor; and second, be paid to the Lessor for application against the outstanding principal components of Rental Payments (as defined in the Agreement) under the Agreement, as provided therein, unless the Lessor directs that payment of such amount be made in such other manner directed by the Lessor 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. The Lessor shall submit its approval of such final accounting to the Lessee within five (5) business days of the Lessee’s submission. The Lessee shall deliver a copy of such Lessor approval of the final accounting to the Escrow Agent together with instructions concerning the disbursement of unexpended Proceeds hereunder. The Escrow Agent shall have no obligation to ensure that such unexpended Proceeds are used as required by the provisions of the Agreement, that being the sole obligation of the Lessee.

8. ESCROW AGENT FEES. The reasonable fees and expenses of the Escrow Agent incurred in connection herewith shall be the responsibility of the Lessee and are herein further described on **Schedule 1**.

9. **LIABILITY OF ESCROW AGENT.** To the extent permitted by law, the Escrow Agent shall not be liable for any act done or step taken or omitted by it or any mistake of fact or law, except for its negligence or default or failure in the performance of any obligation imposed upon it hereunder. The Escrow Agent shall not be responsible in any manner for any proceedings in connection with the Agreement or any recitation contained in the Agreement.

10. **RECORDS.** The Escrow Agent will keep complete and correct books of record and account relating to the receipts, disbursements, allocations and application of the money deposited to the Equipment Acquisition Escrow Fund, and investments of the Equipment Acquisition Escrow Fund and all proceeds thereof. The records shall be available for inspection and copying at reasonable hours and under reasonable conditions by the Lessee and the Lessor. In addition, 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.

11. **SUCCESSORS AND ASSIGNS.** The terms of this Escrow Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors or heirs and personal representatives.

12. **AMENDMENTS.** No amendment, modification, termination or assignment, except as otherwise specified in this Escrow Agreement, of any rights hereunder except to the extent contemplated under this Escrow Agreement, shall be binding on any party hereto unless it is in writing and is signed by each of the parties hereto, and any attempt to so amend, modify, terminate or assign except pursuant to such a writing shall be null and void. No waiver of any rights hereunder shall be binding on any party hereto unless such waiver is in writing and signed by the party against whom enforcement is sought.

13. **RESIGNATION AND REMOVAL OF THE ESCROW AGENT/APPOINTMENT OF SUCCESSOR ESCROW AGENT.** The Escrow Agent and any successor Escrow Agent may resign, and the Lessor may remove the Escrow Agent, or any successor Escrow Agent, at any time. Upon the resignation or removal of the Escrow Agent or any successor Escrow Agent, the Lessee agrees that the Lessor may appoint a successor Escrow Agent, in its sole discretion.

14. **TERMINATION.** This Escrow Agreement shall continue in effect until the Lessor and the Lessee have notified the Escrow Agent by joint written notice that this Escrow Agreement is terminated. Upon receipt of such notice, the obligations of the Escrow Agent hereunder with respect to the operation and maintenance of the Equipment Acquisition Escrow Fund shall terminate, except as to obligations previously incurred with respect to the distribution of the Proceeds.

15. **NOTICES.** Except as otherwise expressly provided herein, any notice, order, instruction, request or other communication required or permitted to be given under this Escrow Agreement shall be in writing and deemed to have been properly given: (i) when delivered in person; (ii) when sent by telecopy and confirmation of error-free transmission is received; (iii)

upon receipt of notice sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth next to such party's name at the heading of this Escrow Agreement; or (iv) upon receipt when sent by nationally recognized overnight courier. Any party may change its address for notices in the manner set forth above. The notice addresses for the Lessor, the Lessee and the Escrow Agent are as follows:

To the Lessor:

Attention: _____

To the Lessee:

Clovis Community College District
417 Schepps Blvd.
Clovis, New Mexico 88101
Attention: _____

To the Escrow Agent:

BOKF, N.A.
100 Sun Avenue NE, Suite 500
Albuquerque, New Mexico 87109
Attention: Corporate Trust Division

16. CHOICE OF LAW. This Escrow Agreement shall be governed exclusively by the applicable laws of the State of New Mexico. Venue for disputes shall be in the New Mexico Ninth (9th) Judicial District Court in Curry County, New Mexico.

17. WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN RESOLVING ANY CLAIM OR COUNTERCLAIM RELATING TO OR ARISING OUT OF THIS ESCROW AGREEMENT.

18. ASSIGNABILITY. Other than as set out in Section 11, this Escrow Agreement shall not be assignable by the parties hereto, in whole or in part, and any attempted assignment shall be void and of no force and effect.

19. ENTIRE AGREEMENT. This Escrow Agreement evidences the entire agreement among the Lessor, the Lessee and the Escrow Agent and supersedes any other agreements, whether oral or written, between the parties regarding the Proceeds or the Equipment Acquisition Escrow Fund. No modification or amendment of this Escrow Agreement shall be valid unless the same is in writing and is signed by the the Lessee and the Escrow Agent and consented to by the Lessor.

20. SEVERABILITY. If any term, covenant, condition or provision of this Escrow Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the

remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

21. COUNTERPARTS. This Escrow Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Escrow Agreement by signing and delivering one or more counterparts.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement effective upon signature of all parties.

_____, LESSOR

By _____
Name:
Title:

CLOVIS COMMUNITY COLLEGE DISTRICT,
LESSEE

By: _____
Name: Mr. Arnold Martinez
Title: Chairman, Board of Trustees

BOKF, N.A., ESCROW AGENT

By: _____
Name: _____
Title: _____

EXHIBIT A

FORM OF REQUISITION

REQUISITION
(PAYMENT FROM EQUIPMENT ACQUISITION ESCROW FUND)

RE: \$7 _____ Equipment Lease Purchase Agreement dated as of _____,
2017, between _____, as lessor, and Clovis Community College, as lessee

TO: BOKF, N.A., as Escrow Agent
100 Sun Avenue NE, Suite 500
Albuquerque, NM 87109
Attention: Corporate Trust Division

_____, as Lessor

Attention: _____

You are hereby authorized to disburse from the Equipment Acquisition Escrow Fund (the "Equipment Acquisition Escrow Fund") established under the Escrow Agreement dated _____, 2017 (the "Escrow Agreement"), among _____, Clovis Community College and BOKF, N.A., as escrow agent, with regard to the above-referenced Equipment Lease Purchase Agreement dated as of _____, 2017 (the "Agreement"), entered into between _____, as lessor (the "Lessor"), and Clovis Community College, as lessee (the "Lessee"), the following:

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

AMOUNT OF REQUISITION: \$ _____

PURPOSE OF REQUISITION: _____

The Equipment and costs described above are (i) part or all of the Equipment listed in the Equipment Schedule to the Agreement, (ii) such substituted Equipment as has been approved by Lessor, or (iii) certain costs of entering into the Agreement. The amount shown is due and payable under (i) a purchase order or contract (or has been paid by and not previously reimbursed to the Lessee), or (ii) invoices, budgets, closing statements or any other additional documentation.

The Lessee hereby certifies and represents to and agrees with the Lessor as follows: (i) the Equipment described above has been delivered and installed at the location(s) set forth in the Equipment Schedule; (ii) a present need exists for such Equipment which need is not temporary or expected to diminish in the near future; (iii) such Equipment 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; (iv) the estimated useful life of such Equipment based upon the manufacturer's representations and the Lessee's projected needs is not less than the term of lease with respect to such Equipment; (v) the Lessee has conducted such inspection and/or testing of such Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts such Equipment for all purposes as of the date of this Requisition; (vi) such Equipment is covered by insurance in the types and amounts required by the Agreement; (vii) 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 (viii) 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 Escrow Agent is hereby authorized and directed to fund the acquisition of the Equipment 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 Equipment Acquisition Escrow Fund held under the Escrow Agreement in accordance with its terms.

The following documents are attached hereto and made a part hereof: (a) Original Invoice(s); and/or (b) Copies of Certificate(s) of Origin, when applicable, designating the Lessor as lienholder if any part of the Equipment consists of motor vehicles, and evidence of filing.

IF REQUEST IS FOR REIMBURSEMENT, CHECK HERE . The Lessee paid an invoice prior to the commencement date identified in the Equipment Schedule 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 any 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.

[Signature page follows.]

IF THIS IS THE FINAL REQUISITION, CHECK HERE . The Lessee hereby certifies that the items of Equipment described above, together with the items of Equipment described in and accepted by Requisitions previously filed by the Lessee and the Lessor with the Escrow Agent constitutes all of the Equipment subject to the Equipment Schedule. Payment of costs of the Equipment is complete or, if not complete, the Lessee understands its obligation to complete the acquisition of the Equipment from other legally available funds.

CLOVIS COMMUNITY COLLEGE
DISTRICT

DATED: _____, 20__.

By: _____
Name: _____
Title: _____

APPROVED FOR PAYMENT:

_____, as Lessor
and servicer for
_____.

By: _____
Name: _____
Title: _____

DATED: _____, 20__.

SCHEDULE 1

ESCROW AGENT FEE SCHEDULE

Attached to and made a part of the Escrow Agreement (the "Escrow Agreement") dated as of _____, 2017, by and among _____, as lessor ("Lessor"), Clovis Community College District, as lessee, and BOKF, N.A., as escrow agent (the "Escrow Agent").

BOKF, NA Fee Schedule

Clovis Community College Equipment Lease Purchase Escrow Fund

Escrow Agent Fee

| | |
|---|-------------------|
| Annual Administrative Fee (payable in advance) | \$ 1500.00 |
| One-time Set-up Fee | 500.00 |
| New Mexico GRT @ 7.3125% | <u>146.25</u> |
| **Total Due at Closing** | \$2,146.25 |

Please use the following payment instructions:

| | |
|---|--|
| By wire: Bank of Oklahoma ABA #103900036 Credit Account #600024642 Wealth Management Ref: Attn: Cindy Mitchell Clovis Community College | By check: Please make check payable to : Bank of Albuquerque Corporate Trust 100 Sun Ave NE, Suite 500 Albuquerque, NM 87109 |
|---|--|

Questions should be directed to Cindy Mitchell at 505/222-8447.

Our fee quotes include the cost of legal review. The quoted fees and acceptance of the appointments are contingent upon review of the documents. If the structure of the proposed escrow changes substantially from that described originally, Bank of Albuquerque reserves the right to revise its fees accordingly. Extraordinary services not included in the administrative fees will be billed in addition to the above fees. Fees are subject to New Mexico Gross Receipts Tax.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT – To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.