

EQUIPMENT LEASE PURCHASE AGREEMENT

THIS EQUIPMENT LEASE PURCHASE AGREEMENT (the “*Agreement*”) is dated as of April ___, 2019, between **CAPITAL ONE PUBLIC FUNDING, LLC**, a limited liability company organized and existing under the laws of the State of New York, as Lessor (“*Lessor*”), and the **CITY OF MILWAUKEE, WISCONSIN**, a municipal corporation of the State of Wisconsin, as Lessee (“*Lessee*”), wherein the parties hereby agree as follows:

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

“*Additional Payments*” means Additional Payments as defined in Section 9 hereof.

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

“*Agreement Interests*” means any fractional interests in the Agreement, including, but not limited to, interests evidenced by trust receipts, beneficial interests or certificates of participation.

“*Available Funds*” means funds appropriated or otherwise made available, from time to time, by the legislative body of the Lessee to pay amounts due under this Agreement for the fiscal year of Lessee in which such payments are due, together with any unexpended Proceeds of this Agreement.

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

“*Commencement Date*” means _____, 2019.

“*Escrow Agent*” means The Huntington Bank, as Escrow Agent under the Escrow Agreement, and its successors and assigns permitted under the Escrow Agreement.

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

“*Escrow*” means the fund established and held by Escrow Agent pursuant to the Escrow Agreement.

“*Escrow Agreement*” means the Escrow and Account Control Agreement dated as of the date hereof among Lessor, Lessee and Escrow Agent.

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

“*Event of Taxability*” means there is a non-appealable final judgment or determination by the Internal Revenue Service or a court of competent jurisdiction that the Interest is includable in Lessor’s gross income for federal income tax purposes (but not including the effect of any

alternative minimum tax, environmental tax or other similar tax effect), as the result of (i) any act, failure to act or use of the Proceeds, (ii) an enactment of any federal legislation after the date of this Agreement, (iii) a promulgation of any income tax regulation or ruling by the Internal Revenue Service after the date of this Agreement or (iv) a change in use of the Equipment or any misrepresentation or inaccuracy in any of the representations or covenants contained in this Agreement.

“*Gross-Up Rate*” means, with respect to any Interest payment (including payments made prior to the Event of Taxability), the rate necessary to calculate a total payment in an amount sufficient such that the sum of the Interest payment plus an additional payment would, after reduced by the federal tax (including interest and penalties) actually payable thereon, equal the amount of the Interest payment.

“*Interest*” means the portion of each Rental Payment designated as and comprising the “Interest Portion” as shown in Exhibit B hereto.

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

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

“*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.

“*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 Termination Value set forth on Exhibit B.

“*Principal*” means the portion of each Rental Payment designated as and comprising the “Principal Portion” as shown in Exhibit B hereto.

“*Proceeds*” means the funds in the amount of \$_____ to be deposited in the Escrow pursuant to Section 4 hereof with the Escrow Agent for application in accordance with the Escrow Agreement.

“*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.

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

“*State*” means the State of Wisconsin.

“*Tax Agreement*” means the Tax Compliance Certificate, dated the Commencement Date, of the Lessee.

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

“*Vendor*” means Johnson Controls, Inc. from whom the Equipment is or has been purchased, as listed on Exhibit A hereto.

“*Vendor Contract*” means the Performance Contract dated as of January 31, 2019, between Vendor and Lessee for the acquisition and installation of the Equipment.

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

(a) Lessee (i) is a duly organized and existing municipal corporation under the laws of the State and (ii) has full power and authority under applicable law to execute, deliver and perform its obligations under this Agreement, the Escrow Agreement and the Tax Agreement.

(b) The execution, delivery and performance of this Agreement, the Escrow Agreement and the Tax Agreement, and the validity and enforceability of this Agreement, the Escrow Agreement and the Tax Agreement, to the extent not already obtained, do not and will not require registration with, or the consent or approval of, or any other action by, any federal, state or other governmental authority or regulatory body

(c) Lessee has been duly authorized to execute and deliver this Agreement, the Escrow Agreement and the Tax Agreement, and all requirements have been met, conditions have been satisfied and procedures have occurred necessary for this Agreement, the Escrow Agreement and the Tax Agreement to be the valid obligations of Lessee, and, when duly executed and delivered by Lessor, this Agreement will be the valid obligation of Lessee, and, when duly executed and delivered by Lessor, the Escrow Agreement will be the valid obligation of Lessee, and the Tax Agreement will be a valid obligation of Lessee, subject, in each case, to: (1) Lessee obtaining or having sufficient Available Funds to meet Lessee’s obligations, (2) bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors’ rights, (3) the application of equitable principles, (4) the exercise of judicial

discretion in appropriate cases, and (5) the limitations on legal remedies against the State and Lessee.

(d) The execution, delivery and performance of this Agreement, the Escrow Agreement and the Tax Agreement (i) have been duly authorized by the Lessee, (ii) to the best knowledge of the undersigned representative of the City, do not and will not conflict with, or result in violation of any material provision of law (federal or state), or any material order, rule or regulation of any court and (iii) do not and will not conflict with, result in a violation of or constitute a default under any material provision of, to the best knowledge of the undersigned representative of the City, any other agreement or instrument to which the Lessee is a party or by which the Lessee or any of its assets is bound and will not result in the creation or the imposition of any security interest, lien, charge or encumbrance of any of its assets pursuant to the provisions of any of the foregoing except as provided therein.

(e) During the term of this Agreement, the Equipment will be used by Lessee only for the purpose of performing one or more governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority.

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

(g) 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.

(h) Except as disclosed to the Lessor in writing, to the best knowledge of the undersigned representative of the City, there is no action or investigation pending or threatened against the Lessee before any court or administrative agency which, if adversely determined, might result in any material adverse change in the financial condition, operations or prospects of the Lessee, or which questions the validity of any proceeding held or action taken by the Lessee in connection with the execution and delivery of this Agreement, the Escrow Agreement or the Tax Agreement, or wherein an unfavorable decision, ruling or finding would in any way materially adversely affect the transactions contemplated by this Agreement, the Escrow Agreement and the Tax Agreement or which in any way would adversely affect the validity or enforceability of this Agreement, the Escrow Agreement and the Tax Agreement (or of any other instrument required or anticipated for use in consummating the transactions contemplated hereby).

(i) Neither the payment of the Rental Payments hereunder nor any portion thereof is (i) secured by any interest in property used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code) or in payments

in respect of such property or (ii) derived from payments in respect of property, or borrowed money, used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code). No portion of the Equipment will be used directly or indirectly in any trade or business carried on by any non-exempt person (within the meaning of Section 103 of the Code).

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

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

(l) The average useful life of the Equipment will not be less than the Maximum Lease Term.

(m) The 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 Lessee has experienced no material adverse change in its financial condition since the date(s) of such information, except as disclosed to Lessor. All financial statements of the Lessee furnished to the Lessor were prepared in accordance with generally accepted accounting principles for government entities and applied on a consistent basis throughout the periods involved. Since the date of the most recent financial statements referred to in the preceding sentence, to the knowledge of the Lessee, no material adverse change has occurred in the business, operations or condition (financial or otherwise) of the Lessee except as otherwise disclosed to the Lessor in writing.

(n) Lessee shall be responsible for the excess (if any) of the actual costs of acquiring the Equipment under the Agreement over the amount deposited by Lessor in the Escrow.

(o) This Agreement shall not be an obligation for which the full faith and credit of Lessee or the City are pledged, and, notwithstanding anything to the contrary contained herein or implied hereby, Lessor shall have no claim or lien on any revenues or other moneys of Lessee, except moneys appropriated or otherwise held in trust for that purpose.

Section 2B. Representations and Covenants of Subsequent Assignee of Lessor.

Lessor represents, warrants and covenants for the benefit of Lessee as follows:

(a) Lessor has full power and authority to carry on its business as now conducted, delivery this Agreement and make the representations and certifications contained herein.

(b) Lessor acknowledges that this Agreement shall not be an obligation for which the full faith and credit of Lessee are pledged, and, notwithstanding anything to the contrary contained herein or implied hereby, Lessor shall have no claim or lien on any revenues or other moneys of Lessee, except moneys appropriated or otherwise held in trust for that purpose.

Section 3. Tax Agreement. Lessee has executed the Tax Agreement as of the date of this Agreement. The representations and covenants of Lessee contained therein are hereby incorporated herein by reference for the benefit of Lessor.

Section 4. Lease of Equipment; Deposit of Proceeds. 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 hereof. 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 termination of this Agreement in the event of nonappropriation of funds pursuant to Section 8 hereof;

(b) the exercise by Lessee of the option to acquire the Equipment under the provisions of Section 31 hereof and payment of the Termination Value and all amounts payable in connection therewith;

(c) a default by Lessee and Lessor's election to terminate this Agreement under Section 36 hereof; or

(d) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder during the Maximum Lease Term and any Additional Payments outstanding.

In connection with any termination pursuant to clause (b) or (d) above, Lessor shall execute and deliver to Lessee such documents and instruments as Lessee may reasonably require to terminate any claims, rights or interests of Lessor in or to the Equipment, including Uniform Commercial Code financing statement amendments.

Section 7. Continuation of Lease Term. Lessee currently intends, subject to the provisions of Section 8 and Section 12 hereof, to continue the Lease Term through the Maximum Lease Term and to pay the Rental Payments hereunder. Lessee reasonably believes that 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 intends that amounts sufficient to make such payments be included in the budget request to the Lessee's legislative body for each fiscal year for adoption in accordance with applicable provisions of the laws of the State; provided that, it is understood that the Lessee's legislative body shall not be obligated to adopt such budget or to appropriate or otherwise make available Available Funds; and provided further that, Lessee expressly reserves the right for any or no reason to terminate this Agreement as set forth in Section 8 hereof.

Section 8. Nonappropriation. In the event sufficient Available Funds shall not be appropriated by the legislative body of the Lessee for the payment of the Rental Payments required to be paid in the next succeeding fiscal year of Lessee to continue the leasing of the Equipment, Lessee may terminate this Agreement, without penalty, as to all of the Equipment at the end of the then-current fiscal year, and Lessee shall not be obligated to make payment of the Rental Payments provided for in this Agreement beyond the then current fiscal year. Lessee agrees to deliver written notice to Lessor of such termination as soon as practicable after such failure to appropriate. Such termination shall not be considered or treated as a default under this Agreement or any other document. If this Agreement is terminated under this Section, Lessee agrees to peaceably deliver the Equipment to Lessor at the location or locations in the State reasonably specified by Lessor.

Section 9. Rental Payments; Additional Payments. Lessee will pay 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. Any Rental Payment not received on or before its due date will bear interest at the rate of 10% per annum or the maximum amount permitted by law, whichever is less, until paid.

Upon the occurrence of an Event of Taxability, Lessee shall, with respect to future Interest payments, begin making Rental Payments calculated at the Gross-Up Rate. In addition, subject to the provisions of the next paragraph, Lessee shall make immediately upon demand of Lessor a payment to Lessor sufficient to supplement prior Rental Payments to the Gross-Up Rate.

Lessee's obligations under this Section 9 shall be limited to Available Funds; provided that upon appropriation of Rental Payments for the Original Term or a Renewal Term, the obligation for payment of the Rental Payments for the applicable Original Term or Renewal Term shall be a binding obligation for the applicable Original Term or Renewal Term. To the extent that Additional Payments are required during said Original Term or a Renewal Term in

the event of an Event of Taxability or a late payment under this Section, or in the event of an Advance under Section 23 hereof, or in the event of any other additional payment obligation under this Agreement (collectively, “*Additional Payments*”), the Additional Payments shall be payable solely from Available Funds. To the extent Available Funds are not available for the applicable Original Term or Renewal Term for payment of the Additional Payments, then the Additional Payments shall be subject to appropriation for the following Renewal Period (or the year following the final Renewal Period, if the Additional Payment was incurred in the final Renewal Period) and failure to so appropriate the Additional Payment for the following Renewal Period shall be an event of nonappropriation under Section 8 hereof, providing the remedies to Lessor for such an event. In addition, no termination of the Lease Term under Section 6(b) hereof shall occur so long as any Additional Payments are outstanding and unpaid.

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

Section 11. Rental Payments to be Unconditional. Except as provided in Sections 8 and 12 hereof, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained herein, to the extent of Available Funds therefor, 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 12. Rental Payments Limited to Available Funds; Rental Payments to Constitute a Current Expense of Lessee; No Pledge.

(a) The obligation of Lessee to make Rental Payments and Additional Payments shall be limited to Available Funds. In no circumstance shall Lessee be obligated to pay amounts due under or in connection with this Agreement from any source other than Available Funds, nor shall the legislative body of the Lessee be obligated in any manner to appropriate or otherwise make available Available Funds.

(b) Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments and Additional Payments under this Agreement shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee, nor shall this Agreement be construed to be an instrument of indebtedness, in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee. This Agreement shall not create an immediate indebtedness for any aggregate payment which may become due during the Lease Term. This Agreement, including the obligation of Lessee to pay the principal and interest components of Rental Payments and Additional Payments, shall not be an obligation for which the full faith and credit of the State or Lessee is pledged. Lessor shall have no claim or lien on any revenues or other moneys of the State or Lessee, except Available Funds. Notwithstanding any other provisions of this Agreement, Lessee, in its discretion, may terminate this Agreement as set forth in Section 8 hereof.

Section 13. Delivery, Installation and Acceptance of the Equipment. Lessor will order the Equipment, cause the Equipment to be delivered and installed at the location specified on *Exhibit A* hereto shall pay any and all delivery and installation costs in connection therewith. When the Equipment has been finally delivered and installed as evidenced by the execution and delivery by Lessee of the Certificate of Final Completion in form as set forth in the Vendor Contract, Lessee will immediately accept the Equipment and evidence said acceptance by executing and delivering to Lessor an acceptance certificate in substantially the form attached as *Exhibit A* to the Escrow Agreement. After it has been installed, the Equipment will not be moved from the location specified on *Exhibit A* hereto 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 of Lessee 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, including, without limitation, all anti-money laundering laws and regulations; 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 reasonable 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 and, if the Equipment is warranted by the manufacturer, in accordance with the maintenance and use requirements of the warranty. Lessor will have no responsibility to maintain, or repair or to make improvements or additions to the Equipment. The Vendor Contract shall continue to be applicable with respect to maintenance of the Equipment.

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 to the Equipment 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 6(b) or (b) hereof 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. It is acknowledged that until a Certificate of Substantial Completion is executed and delivered by Lessee under the Vendor Contract with respect to a component of Equipment for which Proceeds have been applied to payment to the Vendor, title shall remain with Vendor. Upon the execution and delivery by Lessee of the Certificate of Substantial Completion, title to such component of Equipment shall vest in Lessee.

Section 19. Security Interest. Lessee shall not allow a security interest constituting a first lien on the Equipment and on any additions, attachments and accessions thereto and substitutions therefor and proceeds therefrom to be filed ahead of the Lessor's interest therein. If such a first lien is filed ahead of the interests of the Lessor, the Lessee shall promptly work to have such lien released.

Section 20. [Reserved].

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, including any general excise tax, Lessee will pay or cause to be paid all taxes and governmental charges lawfully assessed or levied against or with respect to the Equipment. Lessee will pay or cause to be paid 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 or cause to be paid only such installments that accrue during the Lease Term.

Section 22. Insurance. At its own expense, Lessee will maintain (a) casualty insurance, naming Lessor and its assigns as loss payee and additional insured, 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 Termination Value of the Equipment, and (b) liability insurance, naming Lessor and its assigns as additional insured, that protects Lessor from liability in all events in form and amount satisfactory to Lessor. It is expressly agreed that Lessee may be self-insured for all of the above coverage. All payments from self- insurance or commercial casualty from casualty losses will be payable as hereinafter provided. If coverage is provided by commercial insurance, Lessee will furnish to Lessor certificates evidencing such coverage throughout the Lease Term and shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least ten days in advance of such cancellation or modification.

Lessee shall also provide or cause to be provided to Lessor payment and performance bonds naming Lessor as a dual obligee and issued by a surety company rated "A" or better by

AM Best. All insurance proceeds from casualty losses will be payable as hereinafter provided. Lessee will furnish to Lessor certificates evidencing such coverage throughout the Lease Term.

It is acknowledged that until a Certificate of Substantial Completion is executed by Lessee under the Vendor Contract with respect to a component of Equipment for which Proceeds have been applied to payment to the Vendor, title shall remain with Vendor and the Vendor is contractually obligated to provide casualty insurance. Upon the execution and delivery of the Certificate of Substantial Completion, title to such component of Equipment shall vest in Lessee and Lessee shall have the contractual obligation hereunder to insure such Equipment.

Section 23. Advances. In the event Lessee fails to maintain either the insurance required by this Agreement, pay or cause to be paid 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 Payments for the then current Original Term or Renewal Term. Lessee agrees to pay but solely from Available Funds available for such purpose, such amounts with interest thereon from the date paid at the rate of 10% per annum or the maximum permitted by law, whichever is less.

Section 24. Financial Information. As soon as practicable after receipt thereof by Lessee, Lessee will provide Lessor with proof of appropriation for the ensuing fiscal year. To the extent that Lessee's financial statements are not provided publicly, Lessee shall provide Lessor with such financial statements within 270 days of the end of each fiscal year of Lessee.

Section 25. Damages or Injury. Lessee shall be responsible for damages or injury caused by Lessee's officers and employees in the course of their employment to the extent that Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by Lessee. Lessee shall pay for such damage or injury to the extent permitted by law and provided that Available Funds are appropriated, allotted or otherwise properly made available for that purpose. In each instance in this Agreement where Lessee is obligated to assume responsibility or liability of any type or nature for damages or injuries, including, without limitation, any obligation to perform, be responsible for failure to perform, or pay monies, such obligation shall be subject to and limited by the provisions of this Section 25. Lessor acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of Lessee. Lessee's obligations under this Section 25 shall survive the expiration or earlier termination of this Agreement with respect to events occurring prior to such termination.

Section 26. Risk of Loss. Except as stated in the second sentence immediately following, 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. It is acknowledged that until a Certificate of Substantial Completion is executed by Lessee under the Vendor Contract with respect to a component of Equipment for which Proceeds have been

applied to payment to the Vendor, title to such Equipment shall remain with Vendor and the Vendor has the risk of loss from casualty to such Equipment. Upon the execution and delivery of the Certificate of Substantial Completion, title to such component of Equipment shall vest in Lessee and Lessee shall have the risk of loss hereunder.

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 U.S. governmental body, 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 hereof, in which case Net Proceeds may be applied to such purchase. Any balance of the Net Proceeds remaining after such work has been completed will be paid to Lessee.

Section 28. Insufficiency of Net Proceeds. Alternatively, if the proceeds of such insurance or condemnation together with any other moneys then available for the purpose are at least sufficient to prepay an aggregate principal amount of Rental Payments attributable to the portion or item of the Equipment so destroyed, damaged or condemned (determined by reference to the proportion which the acquisition, construction and installation cost of such portion or item of the Equipment bears to the acquisition, construction and installation cost of the entire Equipment), Lessee may, at its option, elect not to repair, restore, modify, improve or replace the damaged or destroyed or condemned portion or item of the Equipment and thereupon shall cause said proceeds to be used for the prepayment of Rental Payments at the Termination Value for such Equipment.

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.* The Vendor Contract shall continue to be applicable with respect to warranties of the Equipment.

Section 30. Vendor's Warranties. Lessee may have rights under the Vendor Contract relating to the Equipment; Lessee is advised to contact the Vendor for a description of any such rights. Lessor agrees that all assignees of Lessor shall hereby assign to Lessee during the Lease Term all warranties running from Vendor to Lessor. All assignees of Lessor hereby irrevocably appoint 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 the initial assignee of Lessor or any subsequent assignees. 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 assignees of the Lessor will not make any representations or warranties whatsoever as to the existence or availability of such warranties by the Vendor. The Vendor Contract shall continue to be applicable with respect to warranties of the Equipment.

Section 31. Optional Prepayment.

(a) Lessee will have the option to acquire the Equipment and prepay the Rental Payments in whole, upon giving written notice to Lessor at least 30 days before the date of prepayment, at the following times and upon the following terms:

(i) On any Rental Payment Date on or after April 15, 2029, upon payment in full of the Rental Payment then due hereunder plus all other amounts due hereunder plus the then-applicable Termination Value to Lessor; or

(ii) In the event of substantial damage to or destruction or condemnation (other than by Lessee or any entity controlled by or otherwise affiliated with Lessee) of substantially all of the Equipment, on the day Lessee specifies as the prepayment date in Lessee's notice to Lessor of its exercise of the option to prepay the Rental Payments, upon payment in full of the Rental Payment and all other amounts then due hereunder plus (i) the Termination Value designated on the Payment Schedule for such prepayment date if such prepayment date is a Rental Payment Date or the Termination Value for the immediately preceding Rental Payment Date if such prepayment 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 prepay set forth above, title to the Equipment will be vested in Lessee, free and clear of any claim by or through Lessor.

(b) In the event monies remain in any Escrow established under an Escrow Agreement, upon receipt by the Escrow Agent under such Escrow Agreement of a duly executed certificate of acceptance and payment request identified as the final such request, the remaining monies in such escrow fund shall, first be applied to all reasonable fees and expenses incurred by such escrow agent, if applicable, in connection with such escrow fund as evidenced by its statement forwarded to Lessor and Lessee; and, second be paid to Lessor, for application against the outstanding principal components of Rental Payments, including prepayment of Rental Payments hereunder, unless Lessor directs that payment of such amount be made in such other manner that, in the opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor, will not adversely affect the exclusion of the interest components of Rental

Payments from gross income for federal income tax purposes. If any such amount is applied against the outstanding principal components of Rental Payments, the Payment Schedule attached hereto will be revised accordingly.

Section 32. Determination of Fair Purchase Price. Lessee and Lessor hereby agree and determine that the Rental Payments hereunder 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 hereof 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 right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Escrow Agreement, its security interest in the Equipment and Escrow, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, without the necessity of obtaining the consent of Lessee; provided, that Lessor shall not be released from the obligation to perform under this Agreement and shall be responsible for performing any and all obligations under this Agreement in the event that Lessor's assignee or any subsequent assignee fails, in whole or in part, to perform the obligations required under this Agreement, and provided further that any such assignee or subassignee is a qualified institutional buyer within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended, that falls under the regulatory jurisdiction of the Office of the Comptroller of the Currency (a "*Permitted Assignee*"). Such Permitted Assignee shall provide a written certification representing that (i) such Permitted Assignee has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment, (ii) such Permitted Assignee understands that this Agreement will not be registered under the Securities Act of 1933, (iii) such Permitted Assignee is a qualified institutional buyer within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended, and is under the regulatory jurisdiction of the Office of the Comptroller of the Currency and (iv) any further assignment shall be subject to this Section 33; provided further, that in any event, Lessee shall not be required to make Rental Payments, to send notices or to otherwise deal with respect to matters arising under this Agreement with or to more than one individual or entity. Any other assignment of the Agreement shall require the prior written consent of the Lessee, which consent shall be at the Lessee's sole discretion. Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance

permitted by this Section shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee, as well as a certificate from the assignee containing the information required in paragraph (a), above. During the Maximum Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee 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; provided that such filings shall not be deemed to affect or encumber any Lessee real property interest or title to any Lessee real property and any expenses incurred by Lessee, including attorneys' fees, are paid by 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. Events of Default Defined. Subject to the provisions of Sections 8 and 12 hereof, any of the following will be "*Events of Default*" under this Agreement:

(a) Failure by Lessee to pay when due any Rental Payment within fifteen (15) days following the date said Rental Payment is due; provided that a failure to pay any Rental Payments due to nonappropriation as set forth in Section 8 hereof shall not be considered or treated as a default under this Agreement or any other document;

(b) Failure by Lessee to pay any other payment required to be paid hereunder, to the extent there are sufficient Available Funds therefor, and the continuation of such failure without being fully cured within twenty (20) days following written notice to Lessee of such Additional Payment;

(c) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 35(a) hereof, 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 that such failure would materially adversely affect the rights or security of Lessor and provided further that if such failure 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;

(d) Any statement or representation 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 and would materially adversely affect the rights or security of Lessor; or

(e) Any provision of this Agreement will at any time for any reason cease to be valid and binding on Lessee, or will be declared to be null and void, or the validity or enforceability thereof will be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor.

Section 36. Remedies on Default. Upon an Event of Default, 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 demand from Lessee the payment of all Rental Payments and other amounts payable by Lessee hereunder to the end of the then current Renewal Term to the extent there are Available Funds to pay such Rental Payments and other amounts;

(b) With or without terminating this Agreement, Lessor may 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 the location or locations in the State specified by Lessor, and sell or lease the Equipment or, for the account of Lessee, sublease the Equipment, holding Lessee liable, but solely from Available Funds available for such purpose, for the difference between (i) the Rental Payments and other amounts that are currently due and outstanding hereunder plus the applicable Termination Value, and (ii) the net proceeds of any such sale, lease or sublease (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation, all expenses of taking possession, storing, reconditioning and selling or leasing the Equipment and all brokerage, auctioneers' and attorneys' fees) provided that the amount of Lessee's liability under this clause (b) shall not exceed the Rental Payments and other amounts otherwise due hereunder plus the remaining Rental Payments and other amounts payable by Lessee to the end of the then current Original Term or Renewal Term; and

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

In addition, subject to Section 8 hereof and to the extent of Available Funds for such purpose, Lessee will remain liable for all covenants under this Agreement.

Section 37. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver thereof, but any such right and

power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Agreement it will not be necessary to give any notice, other than such notice as may be required in this Agreement.

Section 38. Notices. All notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses as set forth below (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.

If to Lessor: Capital One Public Funding, LLC
12307 Walt Whitman Road, 3rd Floor
Melville, New York 11747

If to Lessee: City of Milwaukee
City Hall Room 404
200 East Wells Street
Milwaukee, Wisconsin
Attention: Comptroller

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

Section 40. Severability. In the event any provision of this Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

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

Section 42. Amendments. This Agreement may be amended, changed or modified in any manner by written agreement of Lessor and Lessee. Any waiver of any provision of this Agreement or any right or remedy hereunder must be affirmatively and expressly made in writing and will not be implied from inaction, course of dealing or otherwise.

Section 43. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

Section 44. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 45. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State.

Section 46. Electronic Transactions. The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies,

telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 47. Role of Lessor. Lessor is acting solely for its own loan account and not as a fiduciary for Lessee or in the capacity of broker, dealer, placement agent, municipal securities underwriter, municipal advisor or fiduciary. Lessor has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of Lessee (including to any financial advisor or any placement agent engaged by Lessee) with respect to the structuring, issuance, sale or delivery of this Agreement. Lessor has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to Lessee with respect to the transactions relating to the structuring, issuance, sale or delivery of this Agreement and the discussions, undertakings and procedures leading thereto. The undersigned expresses no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to Lessee's financial advisor or placement agent, or the correctness of any legal interpretation made by counsel to any other party, including but not limited to counsel to Lessee's financial advisor or placement agent, with respect to any such matters. The transactions between Lessee and Lessor are arm's length, commercial transactions in which Lessor is acting and has acted solely as a principal and for its own interest and Lessor has not made recommendations to Lessee with respect to the transactions relating to this Agreement.

[Remainder of Page Intentionally Left Blank and Signature Page Follows.]

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.

**CAPITAL ONE PUBLIC FUNDING, LLC, as
Lessor**

By: _____
Name: _____
Its: _____

CITY OF MILWAUKEE, WISCONSIN, as Lessee

By: _____
Name: _____
Its: Mayor _____

By: _____
Name: _____
Its: Clerk _____

Countersigned by: _____
Name: _____
Its: Comptroller _____

Approved as to Form, Content, and Execution
This _____ day of April, 2019

Assistant City Attorney

[Signature Page – Equipment Lease Purchase Agreement]

Exhibit A

EQUIPMENT SCHEDULE

Equipment Description

The Equipment consists of energy savings improvements set forth in the Performance Contract dated January 31, 2019 (the "*Performance Contract*"), between Lessee and Johnson Controls, Inc., as described in and at the locations listed therein, together with all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions, and improvements thereof or thereto, and proceeds therefrom. See also Schedule 1 of the Performance Contract attached hereto related to "Scope of Work" for a further description of the Equipment.

Equipment Locations:

The Equipment will be located at the following facilities:

Milwaukee Public Central Library
814 West Wisconsin Avenue
Milwaukee, Wisconsin 53233

Bay View Public Library
2566 South Kinnickinnic Avenue
Milwaukee, Wisconsin 53207

Vendor:

The Vendor for the Equipment is Johnson Controls, Inc.

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 the Escrow Agent pursuant to the Escrow Agreement dated as of April 1, 2019 (the "*Escrow Agreement*") among Lessor, Lessee and the Escrow Agent, which descriptions shall be deemed to be incorporated herein.

Exhibit B

PAYMENT SCHEDULE

Principal Amount (Deposit Amount):	\$ _____
Tax Exempt Interest Rate	3.68%
Closing/Funding Date	April ____, 2019

Pmt. No.	Year No.	Payment Date	Tax-Exempt Payment Amount	Tax-Exempt Interest Portion	Principal Portion	Outstanding Balance*
1	0	10/15/19			0	2,100,000.00
2	1	4/15/20				
3	1	10/15/20				
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14	20	4/15/39				0
			\$	\$	\$	

*Termination Value: The Termination Value is 100% of the Outstanding Balance.

**Said interest is not payable by the Lessee on said date but accrues and is payable in subsequent payments as part of Rental Payments.

Prepayment: Beginning April 15, 2029 and continuing through maturity, Lessee will have the option to prepay its obligations under the agreement in whole on any payment date at the Termination Value in accordance with Section 31(a)(i) of the Lease Agreement.