AGENDA CITY COUNCIL SPECIAL MEETING May 21, 2025 6:00 pm

1. Call to Order:

2. Roll Call:

3. Ordinance 25-05- 1st read – An Ordinance of the City of Holbrook, Arizona, authorizing the lease of certain municipal real property to Jay Foster, and authorizing the Mayor, the City Manager, the City Clerk, and the City Attorney to execute said lease agreement and take all actions necessary to complete the transaction.

4. ADJOURNMENT:

Posted this 15th day of May 2025

Lisa Hunt, CMC, City Clerk



CITY COUNCIL ACTION ITEM REQUEST

Date: 05/21/2025

To: Honorable Mayor Smith and Council Members

From: Randy Sullivan

Subject: Ordinance 25-05

BACKGROUND AND DISCUSSION:

Cabron Utility needs space for a light industrial project to house Special Conex containers. The containers will produce CO2, hydrogen and methanol as direct outputs. The container is being shipped from the UK and is set to arrive in the first part of June. They have toured the facility, and they have deemed this property to be suitable for their start up business. Both Allen and Jay Foster have reviewed the contract and have agreed to the terms.

FINANCIAL IMPLICATIONS:

\$1200.00 in first year and \$3500.00 subsequent years. For an initial term of 5 years.

ALTERNATIVES:

1st read and further recommendations.

REQUEST FOR COUNCIL ACTION:

1st read to Adopt Ordinance 25-05 to enter into agreement with Carbon Utility to lease the old Recycling yard

ATTACHMENTS:

Ordinance 25-05

Contract with Jay Foster, Carbon Utility

ORDINANCE NO. 25-05

AN ORDINANCE OF THE CITY OF HOLBROOK, ARIZONA, AUTHORIZING THE LEASE OF CERTAIN MUNICIPAL REAL PROPERTY TO JAY FOSTER, AND AUTHORIZING THE MAYOR THE CITY MANAGER, THE CITY CLERK AND THE CITY ATTORNEY TO EXECUTE SAID LEASE AGREEMENT AND TAKE ALL ACTIONS NECESSARY TO COMPLETE THE TRANSACTION.

WHEREAS, the City of Holbrook ("City") owns certain real property (Navajo County Assessor's Parcel No. 109-19-250), more specifically identified within <u>Exhibit A</u>, located within the municipal boundaries; and

WHEREAS, Jay Foster ("Lessee"), a limited liability company, has expressed interest in leasing portions of said property; and

WHEREAS, the City has authority to lease municipal property pursuant to Section 1.03(b) of the Holbrook City Charter; and

WHEREAS, the City Council of the City of Holbrook finds that leasing portions of the property, subject to certain terms and conditions, to Jay Foster is in the best interest of the community; and

WHEREAS, the City has complied with all applicable legal requirements.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Holbrook, Arizona, as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

<u>SECTION 2.</u> The City is authorized to enter into the Lease Agreement, which is on file with the City Clerk as <u>Exhibit B</u> and incorporated herein by reference, for the lease of portions of the property designated as Navajo County Assessor's Parcel No. 109-19-250, legally described as <u>Exhibit A</u>.

<u>SECTION 3.</u> If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

<u>SECTION 4.</u> The Mayor, the City Manager, the City Clerk, and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

ATTEST:

By:____

Lisa Hunt, City Clerk

APPROVED AS TO FORM:

By: ____

Allen Quist, City Attorney Pierce Coleman, PLLC

> Number of Councilmembers Present:_____ Number of Votes For:_____ Number of Votes Against:_____ Number of Abstentions:_____

CERTIFICATION

I, LISA HUNT, CITY CLERK, DO HEREBY CERTIFY THAT THE FOREGOING ORDINANCE NUMBER 25-05 WAS DULY PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF HOLBROOK, ARIZONA, AT A REGULAR MEETING HELD ON THE _____ DAY OF _____ 2025, AND THAT A QUORUM WAS PRESENT AT THE MEETING, AND THAT A TRUE AND CORRECT COPY OF ORDINANCE NUMBER 25-05 WAS POSTED IN THREE PLACES ON THE ____ DAY OF _____ 2025.

Lisa Hunt City Clerk

[Exhibits on File at City of Holbrook City Clerk's Office, 465 North 1st Avenue, Holbrook, AZ 86025]

CITY OF HOLBROOK PROPERTY LEASE AGREEMENT

with

Carbon Utility

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Effective Date:

E.127 147 - 1979 573 - 1

PROPERTY LEASE AGREEMENT

This Property Lease Agreement (the "Lease") is executed to be effective the ____ day of _____ 202_ (the "Effective Date") between the City of Holbrook, an Arizona municipal corporation ("Lessor"), and Carbon Utility ("Lessee"). Lessor and Lessee may be referred to jointly as "Parties," and each separately may be referred to as a "Party."

WITNESSETH:

WHEREAS, Lessor is the owner of that certain real property located within Holbrook, Arizona referred to as Navajo County parcel number 109-19-250 (the "Property"); and

WHEREAS, Lessor has the right to lease, license and grant the use of property and facilities on the Property and has full power and authority to enter into this Lease in respect thereof; and

WHEREAS, On the terms and conditions set forth herein, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the Property consisting of approximately .62 acres as set forth in Exhibit A attached hereto (the "Premises"), which shall be used as described below by Lessee; and

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, the Parties do hereby undertake, promise and agree, each for itself and its successors and assigns, as follows:

1. LEASE.

Lessor hereby leases the Premises to Lessee, subject to all easements and rights of way that may encumber the Premises, and further subject to all operational and use restrictions and other terms and conditions set forth in this Lease.

1.1 <u>Right to Use Premises</u>. Lessor agrees that so long as Lessee shall timely pay the Base Rent and other charges required to be paid hereunder and perform all of its other obligations under this Lease, Lessee shall peaceably have and enjoy the use of the Premises without hindrance from Lessor. Lessee specifically acknowledges that Lessee has inspected the Premises prior to entering into this Lease and agrees to accept the Premises in an "as is, where is" condition without any warranty or representation from Lessor, either express or implied, of any kind or nature whatsoever with respect to the Premises, including, but not limited to, any warranty of merchantability, habitability, or fitness for any particular or specific purpose, and all such warranties are hereby disclaimed. Should Lessee desire any inspection report, environmental assessment, survey, creation of a legal description, drainage report, or any similar study, Lessee shall be responsible for the same at Lessee's sole expense.

1.2 <u>Construction of or placement of Shipping Containers and Restrooms on</u> <u>Premises</u>. Lessee may place Shipping Containers on the Premises. Lessee may construct or cause to be constructed a restroom on the Premises (the

"Work"); however, any such construction must be in accordance with and as more fully described in specifications and drawings ("Contract Documents"), to be pre-approved by Lessor, and subject to all permits and requirements of law. Lessee agrees and acknowledges that it is not an agent or employee of the Lessor. Lessee shall supervise and direct the Work to be done, using Lessee's best skill and attention. Lessee shall be solely responsible for all construction means, methods, techniques, sequences, procedures, and for coordinating all portions of the Work required by the Contract Documents. Lessee shall be responsible to any subcontractors and their agents and employees, and other persons performing any of the Work under the Contract Documents and shall indemnify and hold harmless the Lessor from and against all claims of any character or nature, demands, suits, actions, costs, including but not limited to, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses and liability, whether direct or indirect, and whether to any person or property, including natural resources, arising out of the Work performed under the terms of the Contract Documents, Lessee's use of the Premises, or on account of any act or omission by the Lessee or its agents, employees or representatives, or from any claims or amounts arising or recovered under Workers' Compensation laws or any other law, bylaw, or ordinance, order or decree or any failure on the part of Lessee, its agents, employees or representatives to fulfill Lessee's obligations under the Contract Documents and this Agreement. Lessee acknowledges that ownership of the property will be transferred to Lessor subject to normal wear and tear by Lessee during the term of this Agreement. Lessee shall retain all rights to use and lease of the property as provided in this Agreement, but at the end of the term of this Agreement, including any renewals, Lessee shall have no right to claim ownership or title to the property or any part of the Premises, which shall remain with Lessor.

1.3 Substitution of Premises. In addition to Lessor's other rights set forth in this Lease, Lessor has the right (but not the obligation) to substitute Comparable Areas for all or any portion of the Premises, and any additions, alternations or improvements thereon, should Lessor, in its reasonable discretion, determine that taking of the Premises, any portion thereof or any improvement thereon, is required for other City purposes, and there exists no appropriate alternative. In the event Lessor makes the determination to exercise its rights to substitute, all title, right and interest to any portion of the Premises taken shall immediately vest in Lessor. Furthermore, Lessor may require Lessee to vacate any portion or all of the Premises taken. For the purposes of this Section 1.3, the term "Comparable Areas" is defined to mean other areas at the Property, or any additions or extensions thereof, similar in size to the Premises, brought to the same level of improvement as the Premises and having the same or similar usefulness to Lessee as the portion taken. Lessor shall bear all expenses of bringing the substituted area to the same level of improvement as the Premises, and of moving Lessee's improvements, equipment, furniture and fixtures (if any) to the substituted area. Lessor shall be deemed the owner of the non-relocated improvements and other property, free and clear of all claims of any interest or title therein by Lessee, or any other third party whomsoever. Lessor shall not be obligated to reimburse Lessee for any damages, including lost profits or revenues, due to such substitution.

1.4 <u>Access</u>. Lessee is granted the right of access to and from the Premises via such portions of the Property as are or may be necessary to allow Lessee to conduct its business operations permitted herein at and on the Premises. Lessor reserves the right to designate the location of such access and to change its location from time to time, as Lessor deems reasonably necessary and appropriate in Lessor's sole discretion.

1.5 <u>Permitted Uses</u>. Subject to the provisions of this Section 1.6, Lessee may use the Premises for agreed apon activities only. Lessee will ensure that the use of the Premises does not generate any nuisance conditions, such as fumes, vibrations, flashing lights, odors, or traffic that interfere with the use and enjoyment of other properties.

1.6 <u>Prohibited Activities</u>. Lessee shall not use or permit its agents, employees, contractors, invitees, licensees or customers to use the Premises for any use that is in violation of applicable laws, rules, regulations and operating policies of any governmental authority, including Lessor, or for any other activity or operation that does not have advance, written approval of Lessor's City Manager. Lessee's use of the Premises is subject to all applicable laws, rules and regulations of any governmental authority. Lessee shall not perform maintenance or repairs that would include use or exposure of petroleum products (oil, fuel, hydraulics, etc.) on the Premises.

1.7 <u>Continuous Operation</u>. Upon commencement of operations at and on the Premises, Lessee shall designate an on-site manager for the term of this Lease who shall be available to Lessor and Lessee's stakeholders during normal business hours.

1.8 Lessee Acknowledgement. Lessee acknowledges and agrees that its obligations to pay Base Rent and all other charges due and owing under the terms hereof shall be absolute and unconditional, and shall not be affected by any circumstances whatsoever, including, without limitation: (i) any set-off, counterclaim, recoupment, defense or other right which Lessee may have against Lessor or the United States of America or anyone else for any reason whatsoever; (ii) any liens, encumbrances or rights of others with respect to the Premises; (iii) the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease or any lack of right, power or authority of Lessor or Lessee to enter into this Lease; (iv) any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessee, or any other person; or (v) any other cause, whether similar or dissimilar to the foregoing, any future or present law notwithstanding, it being the intention of the Parties hereto that all rent being payable by Lessee hereunder shall continue to be payable in all events and in the manner and at the times provided herein.

2. TERM.

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2.1 <u>Initial Term</u>. The term of this Lease shall be for a period of 5 years, commencing at 12:00 A.M. on the Effective Date and terminating 11:59 P.M. on the 30th day of June, 2030 thereafter (the "Term"). Notwithstanding the foregoing, the Lessor may terminate the Lease early if during any consecutive two-year period during the lease Term, the Lessee's business operations on the Premises are not fully established and functioning. Lessor shall provide thirty day written notice of any such termination to the Lessee, and the termination shall not result in the Lessor owing any costs, fees, reimbursements, or other amounts to the Lessee.

3. NONEXCLUSIVE RIGHTS.

Lessee shall have the exclusive right to occupy and use the Premises while in compliance with the terms and conditions of this Lease. All other rights granted to Lessee under this Lease are

nonexclusive. Lessor may, in its sole discretion and at any time, permit third parties to conduct any and all business activities at the Premises that Lessor deems appropriate, or conduct such activities itself, provided that such activities do not require or materially interfere with Lessee's use of the Premises.

4. RENT.

4.1 <u>Base Rent</u>. Lessee agrees to pay Lessor rent for the use of the Premises at the amount of \$1,200.00, for the first year on the Premises (the "Base Rent"). The Base Rent shall be payable in advance and without any prior demand therefor and without any abatement, deductions or set-offs whatsoever, and tendered in lawful currency of the United States, either by check or electronic transfer. Lessee shall only pay for the premises as described above and depicted in Exhibit A as part of the rent to the Lessor. The annual Base Rent will increase from \$1,200.00 during the first year to \$3,500 a year for each year subsequent contract year.

4.2 <u>Payment</u>.

4.2.1 The first payment of Base Rent shall be paid prior to the Effective Date, and thereafter, the Lessee shall submit annual Base Rent payments at the start of each new contract year.

the and payable under the provisions of this Lease at the time of such payment shall be deemed to be other than a payment on account of the earliest payment due, nor shall any endorsement or statement on any check or payment prejudice in any way Lessor's right to recover the balance of such payment or pursue any other remedy provided in this Lease or by law.

4.2.3 All payments and reports required by this Section 4.2 shall be remitted to the following address by the due date(s) specified hereinabove:

City of Holbrook ATTN: City Manager P.O. Box 970 Holbrook, AZ 96025

or such other address specified in writing by Lessor to Lessee.

4.3 <u>Survival</u>. Lessee's obligation to pay all amounts stated herein shall survive the termination of this Lease.

5. IMPROVEMENTS.

5.1 <u>Construction by Lessee</u>. Lessee is responsible for any and all improvements and construction related to the property. Lessee shall submit to Lessor any and all improvements and construction plans for review and approval.

5.2 <u>No Alterations</u>. Lessee shall make no exterior improvements or alterations to the Premises during the Term of this Lease without the prior written permission of Lessor. Lessee shall provide Lessor with electronic as-built drawings (or their equivalent) when any improvement or alteration is completed for which such drawings are required.

5.3 <u>Title to Alterations and Improvements</u>. Title to all improvements and alterations made by Lessee on the Premises and that may be moved without damage to the Premises shall vest in Lessee upon the expiration of this Lease.

5.4 <u>Mechanics' Liens</u>. Lessee shall keep the Premises and any/all improvements constructed by Lessee thereon free of any mechanic or materialmen's liens. In the event that any such lien is filed, Lessee shall, at its sole cost, cause such lien to be removed from the Premises by bonding or otherwise within thirty (30) days of notice thereof.

5.5 <u>Permit Required</u>. Lessee shall be responsible for determining whether it is subject to local building codes or building permit requirements, and for compliance with them to the extent they are applicable. All structural, electrical, plumbing or mechanical construction or reconstruction shall conform to City of Holbrook, Arizona (the "City") construction and technical codes. No such work shall be commenced without first submitting required plans and obtaining required permits from the City. All such work shall be permitted, inspected and approved by the City prior to concealment or use. Lessee shall provide to Lessor a contemporaneous copy of Lessee's permit application and the associated plans and specifications.

1.1.1.2.

5.6 <u>Damage or Destruction</u>. Lessee shall maintain insurance on the Premises and all improvements and personal property located on and within the Premises. In the event that all or any portion of the Premises is destroyed or rendered unusable, Lessee shall be entitled to replace, repair, restore, modify or improve the Premises, subject to the provisions of Section 5.5, using insurance proceeds together with any additional funds from other available sources, or, alternatively, Lessee shall pay the replacement cost of the Premises to Lessor.

5.7 <u>Fire Department Approval</u>. Lessee shall provide for approval of a fire protection plan for the premises prior to commencing operations. The Lessee shall maintain the approved fire protection plan throughout the life of the lease.

6. MAINTENANCE.

6.1 <u>Maintenance by Lessee</u>. Lessee shall, at its sole cost and expense, keep the Premises and all improvements therein in a neat and clean condition and in good order, condition and repair. Lessee shall prepare, maintain and follow a preventative maintenance schedule for all mechanical, electrical, plumbing, drain, piping and air conditioning systems on the Premises, and, upon request, provide a copy of such schedule to Lessor and, if required by Lessor, a list of the dates on which such maintenance was actually done.

6.2 <u>Damage to Lessor Property</u>. Any real or personal property of Lessor damaged or destroyed by Lessee as a result of Lessee's use or occupancy of the Premises shall be promptly repaired or replaced by Lessee to the satisfaction of Lessor. In lieu of such repair or replacement, where required by Lessor, Lessee shall pay to Lessor an amount sufficient to compensate for the loss sustained by Lessor.

6.3 <u>Trash Removal</u>. Lessee shall at all times keep the Premises in a neat, clean, safe, sanitary and orderly condition and shall keep such area free of all trash and debris. Lessee shall be responsible for all trash removal from the Premises at Lessee's cost.

6.4 <u>Emergency Repairs</u>. Within fifteen (15) days of the Effective Date, Lessee shall provide Lessor with a list of names and telephone numbers for 24-hour emergency contact for the Premises. Lessee shall promptly provide Lessor with updated lists and changes as necessary.

7. ASSIGNMENT, SUBLETTING AND OTHER TRANSFERS.

Lessee may not transfer, assign, encumber, pledge or hypothecate its interest in this Lease or any right or interest hereunder, or sublet the Premises or any part thereof, without first obtaining prior written consent of Lessor. In the case of an assignment (other than an assignment as security), the assignee must expressly assume in writing all of Lessee's obligations under this Lease, and in the case of a sublease, the sublease shall expressly provide that it is subject to all of the terms and conditions of this Lease. Upon an assignment of all of its interest in this Lease, the assignor shall be released from all liability and obligation under this Lease from and after the effective date of the assignment.

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8. IDENTIFICATION SIGNS.

Lessee may install on the Premises, a sign or signs identifying its business, provided, however, that the general type, size, and location of such sign(s) shall be approved in writing by Lessor in advance of installation and be subject to any signage rules, codes and/or regulations of any governmental authority.

9. DEFAULT; TERMINATION BY LESSOR.

9.1 <u>Events of Default</u>. Each of the following shall constitute a material default of this Lease by Lessee (an "Event of Default"):

9.1.1 The failure of Lessee to pay Base Rent or any other amount due from Lessee hereunder, provided that Lessee does not cure such failure within ten (10) business days after delivery by Lessor of a written notice of such failure.

9.1.2 The failure of Lessee to perform any of its other obligations under this Lease, provided that Lessee does not cure such failure within thirty (30) calendar days after delivery by Lessor of a written notice of such default; provided, however, if a cure of the default

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reasonably requires more than thirty (30) calendar days to complete, then the time to cure shall be extended so long as the cure is being diligently pursued.

9.1.3 The filing of any mechanic's, materialmen's or other lien or any kind against the Premises because of any act or omission of Lessee which lien is not discharged, by bonding or otherwise, within thirty (30) days of receipt of actual notice thereof by Lessee.

9.2 <u>Lessor's Remedies</u>. Upon the occurrence of an Event of Default under this Lease, Lessor may, without prejudice to any other rights and remedies available to a Lessor at law, in equity or by statute, exercise one or more of the following remedies, all of which shall be construed and held to be cumulative and non-exclusive:

9.2.1 Terminate this Lease and re-enter and take possession of the Premises; or

9.2.2 Without terminating this Lease, re-enter and take possession of the Premises and terminate Lessee's right of access or occupancy to the Premises; or

9.2.3 Without such re-entry, recover possession of the Premises in the manner prescribed by any statute relating to summary process, and any demand for Base Rent, re-entry for condition broken, and any and all notices to quit, or other formalities of any nature to which Lessee may be entitled, are hereby specifically waived to the extent permitted by law; or

9.2.4 With or without terminating this Lease, Lessor may re-let the Premises or any portion thereof.

9.3 <u>No Implied Termination</u>. Lessor shall not be deemed to have terminated this Lease unless Lessor shall have notified Lessee in writing that it has so elected to terminate this Lease. Lessee hereby waives all claims based on Lessor's reentering and taking possession of the Premises or removing and storing the property of Lessee and shall save Lessor harmless from all losses, costs or damages occasioned thereby. No such reentry shall be considered or construed to be a forcible entry by Lessor.

9.4 Lessor's Current Damages. Lessor is authorized to make such repairs, refurbishments or improvements to the Premises as may be necessary for the purpose of attempting to re-let the Premises, and the costs and expenses incurred in respect of such repairs, redecorating, refurbishments and improvements shall be paid by Lessee to Lessor within five (5) business days after receipt of Lessor's statement. If Lessor exercises any of the remedies stated above, Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of the Event of Default, which shall include, without limitation, (i) the equivalent of the amount of the Base Rent and all other payments which would be payable under this Lease by Lessee for the remainder of the term if this Lease were still in effect, less (ii) the net proceeds of any re-letting by Lessor after deducting all of Lessor's expenses in connection with such re-letting, which shall include, without limitation, repossession costs, repairs, redecorating, refurbishments or improvements to the Premises, brokerage commissions, attorneys' fees, and legal expenses. Lessee shall pay such current damages to Lessor, in the amount set forth in the preceding sentence (hereinafter called the "Deficiency"), in monthly installments on the days on which the Base Rent would have been payable under this Lease if this Lease were still in effect. All amounts collected by Lessor from subtenants shall be credited against Lessor's damages.

9.5 Lessor's Final Damages. At any time after an Event of Default, whether or not Lessor shall have collected any monthly Deficiency as set forth above, Lessor shall be entitled to recover from Lessee, and Lessee shall pay to Lessor, on demand, as final damages for the applicable Event of Default, the sum of (a) the then present worth (at a discount at the rate of six percent (6%) per annum) of (i) the aggregate of the Base Rent and all other amounts to be paid by Lessee hereunder for the unexpired portion of the term of this Lease (assuming this Lease had not been terminated), less (ii) the amount of such loss that could have been reasonably avoided, plus (b) repossession costs, Lessor's expenses in connection with any attempts is may have made to relet the Premises (which shall include, without limitation, repairs, refurbishments or improvements to the Premises and brokerage commissions), attorneys' fees, legal expenses, and all other damages incurred by Lessor as a result of such Event of Default.

9.6 <u>No Waiver by Lessor</u>. No waiver by Lessor of any breach or default by Lessee in the performance of its obligations under this Lease shall be deemed to be a waiver of any subsequent default by Lessee in the performance of any of such obligations, and no express waiver shall affect an Event of Default in a manner other than as specified in said waiver. The consent or approval by Lessor to or of any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent or approval to or of any subsequent similar acts by Lessee.

-- 9.7 <u>Content of Default Notice</u>. Any default notice tendered to Lessee hereunder shall be deemed to be sufficient if it is reasonably calculated to put Lessee on notice as to the nature and extent of such default, and is made in accordance with Section 17 herein.

9.8 <u>Cancellation</u>. This Lease may be cancelled pursuant to the provisions of Arizona Revised Statutes § 38-511.

10. INDEMNIFICATION.

To the fullest extent permitted by law, Lessee hereby agrees to defend, indemnify and hold harmless Lessor and its members, elected or appointed officials, agents, contractors, subcontractors, attorneys, boards, commissions and employees (hereinafter referred to collectively as the "Lessor" for purposes of this Section 10) for, from and against any and all claims, causes of action, liability, suits, litigation (including attorney's fees and other costs of investigation and litigation), actions, losses, damages or claims of any nature whatsoever which arise out of or in connection with (i) any accident, injury or damages occurring within the Premises, or (ii) any act or omission of Lessee or its agents, employees, contractors, or subcontractors (hereinafter referred to collectively as "Lessee" for purposes of this Section 10) in connection with Lessee's operations hereunder and which result directly or indirectly in the injury to or death of any persons or the damage to or loss of any property, or (iii) the failure of Lessee to comply with any provisions of this Lease, including any claims related to the provisions of Section 11 of this Lease and Lessee's use of, and operations on, the Premises.

11. ENVIRONMENTAL PROTECTION.

11.1 <u>Definitions</u>. Unless the context shall clearly require otherwise, the terms defined in this section shall, for all purposes of this Lease and of any amendments, have the meanings herein specified, with the following definitions to be equally applicable to both the single and plural forms of any of the following:

11.1.1 Environmental Laws. The term "Environmental Laws" shall mean any one or all of the following, as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC § 9601 et seq.; the Resource Conservation and Recovery Act, 42 USC § 6901, et seq.; the Toxic Substances Control Act, 15 USC § 2601 et seq.; the Safe Drinking Water Act, 42 USC § 300h et seq.; the Clean Water Act, 33 USC § 1251 et seq.; the Clean Air Act, 42 USC §7401 et seq.; the Arizona Hazardous Waste Management Act, A.R.S. § 49-921 et seq., the Arizona Environmental Quality Act, Title 49 of the Arizona Revised Statutes, as amended; and all regulations thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including substrata land, or that govern the use of hazardous or radioactive materials, hazardous or radioactive waste or emissions and hazardous substances and petroleum products.

11.1.2 <u>Hazardous Material</u>. The term "Hazardous Material" shall mean any toxic or hazardous or radioactive material, substance emission or waste, or any pollutant or contaminant as defined or regulated pursuant to any Environmental law and petroleum products. For purposes of this definition, petroleum includes petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing (e.g., distillate fuel oils, petroleum solvents and used oils).

11.3 Lessee Compliance.

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11.3.1 Lessee shall, at the Lessee's own expense, comply with all present and hereafter enacted Environmental Laws, and any amendments thereto, affecting Lessee's operation on and property interest in the Premises during the period of Lessee's occupancy of the Premises under this Lease.

11.3.2 Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Property by Lessee, its agents, employees, contractors or invitees in violation or threatened or suspected violation of any Environmental Law.

11.4 <u>Indemnification</u>. To the fullest extent permitted by law, Lessee shall indemnify, defend (with counsel reasonably acceptable to Lessor), protect and hold harmless Lessor and its members, elected or appointed officials, agents, contractors, subcontractors, attorneys, boards, commissions and employees for, from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of

the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result of any of Lessee's activities or operations on or discharged on or from the Premises during the Term of this Lease. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the property, land, soil and underground or surface water as required under the law. Lessee's obligations and liabilities under this Section 11.4 shall survive the termination of this Lease. The indemnification of Lessor by Lessee as described above includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the property or present in the soil or ground water on or under the Premises. If Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's failure to abide by the provision of this Section 11.4, Lessor shall have the right to injunctive relief in the event of any violation or threatened violation by Lessee.

11.5 <u>Remediation</u>. Without limiting the foregoing, if the presence of any Hazardous Material during the Term of this Lease caused or permitted by Lessee results in any Release on the Property in violation or potential violation of any Environmental Law, Lessee shall promptly take action to remediate the affected property at its sole expense as is necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Material to the Premises; provided that Lessor's approval of such actions shall first be obtained, except in emergency. Notwithstanding Lessor's approval pursuant to this Section 11.5, Lessor is not responsible for directing or managing any remediation action. For purposes of this Section 11.5, the term "Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

11.6 <u>Governmental Submittals</u>. Lessee shall, at Lessee's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that a site characterization, site assessment and/or cleanup plan should be prepared and/or that a cleanup should be undertaken because of any spills or discharges of Hazardous Materials by reasons of Lessee's operations or actions at the Property which occur during the term of this Lease, then Lessee shall, at the Lessee's own expense, prepare and submit the required plans and financial assurances, and carry out the approved plans.

12. PROTECTION OF WETLANDS.

Lessee shall minimize the destruction, loss, or degradation of wetlands located on the Premises. Lessor believes there are no wetlands existing on the Premises as of the Effective Date. However, before locating new construction in wetlands, if any exist, Lessee shall contact Lessor and the United States Army Corps of Engineers and obtain a permit or waivers under Section 404 of the Clean Water Act. For purposes of this Section 14, the term, "new construction," includes structures, facilities, draining, dredging, channeling, filling, diking, impounding, and related activities.

13. SPECIAL PROVISIONS.

13.1 Lessee shall comply with all applicable Federal, State, and local occupational safety and health regulations.

13.2 Lessee shall be responsible for determining whether it is subject to State and local sanitation, licensing, building code or building permit requirements and whether or not it requires a permit to do business and for compliance with them to the extent they are applicable.

14. INSURANCE.

14.1 <u>Coverage Required</u>. Lessee shall procure and maintain, or cause to be procured and maintained, the following types and amounts of insurance with respect to the Premises:

14.1.1 Lessee shall, at its own cost, maintain comprehensive general liability insurance with limits of not less than \$1,000,000.00 per occurrence, insuring against all liability of Lessee and its authorized representatives arising out of and in connection with the Lease and/or the use of the Premises by the Lessee, its guests, invitees, agents, contractors and employees. Said insurance shall include broad form contractual liability covering, without limitation, the liability assumed under the indemnification provisions of this Agreement. If the policy is to be written with an annual aggregate limit, that limit shall be not less than \$5,000,000.00.

14.1.2 Lessee's comprehensive general liability insurance policy shall name the Lessor, and sits elected and appointed officials, officers, agents, employees, attorneys and so work volunteers as additional insureds.

14.1.3 Lessee's insurance policy shall provide the following: 1) the policy cannot be cancelled, or reduced in its coverage amounts, or otherwise substantially modified in any material respect until and unless 30 days written notice is received by the Lessor; 2) the insurance company shall have no recourse against the Lessor for payment of any premium or for assessments under any form of policy; and 3) the Lessee's policy is intended as primary coverage for the Lessor and any insurance or self-insurance maintained by the Lessor shall apply only in excess of, and not in contribution with, the insurance provided by the Lessee's policy.

14.1.4 Lessee shall furnish a certificate of such coverage to Lessor in a form acceptable to Lessor, prior to the Effective Date and shall continue to provide such certificates throughout the term of this Lease. For the insurance required under this Lease, Lessee will name the City of Holbrook, its agents, elected and appointed officials, employees, officers, attorneys and volunteers as additional insured, as evidenced by providing either an additional insured endorsement or proper insurance policy excerpts. Lessee will provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under this Agreement. Lessee's insurance shall be primary of all other sources available. When the City is a certificate holder and/or an additional insured, Lessee agrees that no policy will expire, be cancelled, or be materially changed to affect the coverage without 30 days advance written notice to City.

14.1.5 The procuring of coverage by insurance, or self-insurance, shall not be construed to be a limitation upon the liability imposed by, or as a full performance of, the indemnification provisions of this Agreement. The insurance requirements herein are minimum requirements for this Lease and do not limit the indemnity promise(s) contained in this Lease. Failure to maintain the required coverage, by insurance or self-insurance, shall constitute a default of this Lease and is grounds for immediate termination of the Lease.

14.1.6 The insurance required herein must be in effect at or prior to the execution of this Agreement and remain in effect for the duration of the Initial Term and any Successive Term of this Agreement.

14.1.7 The insurance policies required herein must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, officers, employees, elected and appointed officials, and volunteers for any claims arising out of the services provided by Lessee.

14.1.8 Lessee shall report any personal injuries or property damage arising at any time during and/or arising out of or in any way connected with Lessee's use or occupancy of the Premises in accordance with Section 17 herein, in writing and as soon as practicable.

14.4 <u>Additional Insurance</u>. At any time during the term of this Lease, Lessor may, if in its reasonable determination the insurance coverage required by this Section 14 is no longer adequate, require Lessee to increase its coverage.

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15. SURRENDER OF POSSESSION.

15.1 <u>Condition of Property</u>. Upon the expiration or termination of this Lease, Lessee's right to occupy the Premises and exercise the privileges and rights granted under this Lease shall cease, and Lessee shall peaceably surrender the same and leave the Premises broom clean and in good condition except for normal wear and tear. All trade fixtures, equipment, and other personal property installed or placed by Lessee on the Premises which are not permanently affixed thereto shall remain the property of Lessee, and Lessee shall have the right at any time during the term of this Lease, to remove the same from the Premises, and that Lessee shall repair, at its sole cost, any damage caused by such removal. Any property not removed by Lessee within the thirty (30) day period immediately following Lease termination shall become a part of the Premises, and ownership thereof shall vest in Lessor.

15.2 <u>Holding Over</u>. Lessee shall not remain in possession of the Premises after the expiration or earlier termination of the Term without the express written consent of Lessor. Should Lessee hold over without the express written consent of Lessor, such tenancy shall be at the sufferance of Lessor and not a renewal of the Term and in such case, the Base Rent and all other charges due pursuant to this Lease shall be payable at one hundred fifty percent (150%) of the amount payable during the last year of the Term and such tenancy at sufferance shall be subject to every other term, covenant and provision of this Lease. In the event Lessee holds over, Lessee shall be liable for all of Lessor's direct and consequential damages, which shall include, without limitation, costs, fees, expenses, damages and attorneys' fees incurred by Lessor as a result of

Lessee's holding over, and damages and expenses incurred by Lessor for its inability to deliver possession of the Premises to a new lessee.

16. INSPECTION BY LESSOR.

Lessor may enter upon the Premises at reasonable times and upon reasonable notice for any reasonable purposes including, but not limited to, compliance with the terms and conditions of this Lease and the exercise of its governmental functions such as fire protection or security purposes.

17. NOTICES.

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17.1 All notices required or permitted under this Lease shall not be effective unless personally delivered or mailed by certified mail, return receipt requested, postage prepaid, or by reputable commercial overnight courier service, to the following addresses:

TO LESSOR:	City of Holbrook, Arizona
	ATTN: City Manager
	P.O. Box 970
	Telephone: 928-524-6225
TO LESSEE:	Jay Foster Carbon Utility

17.2 Any notice shall be deemed to have been received two (2) days after the date of mailing, if given by certified mail, or upon actual receipt if personally delivered or if given by reputable commercial overnight courier service. Any Party may designate in writing a different address for notice purposes pursuant to this Section.

18. SEVERABILITY.

Should a court of competent jurisdiction declare any provision of this Lease invalid, the remaining terms shall remain effective.

19. SALES AND PROPERTY TAXES.

Lessee shall pay any leasehold tax, sales tax, personal property tax, transaction privilege tax, license or permit fees or other tax assessed as the result of its occupancy of Premises or conduct of business at the Premises under authority of this Lease, including any such tax assessable on Lessor. In the event that laws or judicial decisions result in the imposition of a real property tax or any other form of tax or imposition on the interest of Lessor, such tax shall also be paid by

Lessee for the period this Lease is in effect to the extent such taxes are reasonably attributable to the Premises or a portion thereof or the operation of Lessee's business.

20. APPROVALS, CONSENTS AND NOTICES.

All approvals, consents and notices called for in this Lease shall be in writing, signed by the appropriate party, and may not be established solely by oral testimony.

21. LIENS AND MORTGAGES.

Lessee shall not engage in any financing or other transaction creating any mortgage or deed of trust upon the Premises, place or suffer to be placed upon the Premises any lien or other encumbrance, or suffer any levy or attachment to be made on Lessee's interest in the Premises. Any such mortgage or deed of trust, encumbrance, or lien shall be deemed to be a violation of this Section, constituting a failure to comply with the terms of the Lease, on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

22. GOVERNING LAW; ATTORNEY'S FEES.

The laws of the State of Arizona shall govern the matters set forth in this Lease. Venue of any action brought under this Lease shall, at the option of Lessor, lie in Navajo County, Arizona. In the event of any litigation or arbitration between Lessor and Lessee arising under this Lease, the successful party shall be entitled to recover its attorney's fees, expert witness fees and other costs incurred in connection with such litigation or arbitration.

23. RULES AND REGULATIONS.

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Lessee shall at all times comply with all Federal, State and local laws, ordinances, rules, and regulations which are applicable to its operations, the Premises itself (including but not limited to the Americans with Disabilities Act), or the operation, management, maintenance, or administration of the Premises, including all laws, ordinances, rules and regulations adopted after the Effective Date. Lessee shall be responsible for controlling and preventing disruptive pedestrian and vehicle traffic associated with its business. Lessee also shall display to Lessor any permits, licenses, or other evidence of compliance with laws upon request.

24. CORPORATE AUTHORIZATION.

In executing this Agreement, Lessee represents and warrants to Lessor that if Lessee is a corporation, Lessee has obtained and been granted the full right, power and authority to enter into this Lease.

25. UTILITY LINES AND SERVICE CHARGES.

25.1 Lessee shall, at no cost or expense to Lessor, provide or arrange for any public utility, water and sewage lines and connections that are needed in connection with any building(s), structure(s) or other improvement(s) placed on the Premises by Lessee and shall be responsible for the maintenance of such lines and connections from where they enter the Premises. If requested in advance to do so by Lessee, Lessor may grant reasonable rights-of-way on or across the Premises to suppliers of public utility services for the purpose of supplying Lessee with such services.

25.2 Lessee shall pay for all utilities used in its operations at the Premises. The charges and method of payment for each utility or service shall be determined by the appropriate supplier of the utility or service in accordance with applicable laws and regulations, on such basis as the appropriate supplier of the utility or service may establish.

25.3 Notwithstanding the execution of this Lease, Lessor retains the right to the continued use of such utility lines and services as are presently on the Premises and the right to repair the same when necessary in Lessor's sole discretion, including but not limited to any utility easements on the Premises. Lessor shall conduct such repairs in such a manner and at such times as to not unreasonably interfere with Lessee's operations.

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26. **RESERVATIONS TO LESSOR.**

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The Premises are accepted "as is, where is" by Lessee subject to any and all existing easements or other encumbrances, and Lessor shall have the right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, connections; water, oil and gas pipelines; telephone and telegraph power lines; and such other appliances and appurtenances necessary or convenient to use in connection therewith, over, on or across the Premises, or any part thereof, as will not unreasonably interfere with Lessee's operations hereunder, and to enter upon the Premises for such purposes. Lessor also reserves the right to grant franchises, easements, rights-of-way, and permits, over, on or across any portions of the Premises for the same purposes, provided, that Lessor or the grantee, as applicable, shall not exercise such rights so as to interfere unreasonably with Lessee's operations on the Premises and all such interference shall be minimized. Lessor agrees that any rights granted to any parties by reason of this clause shall contain provisions that the surface of the Premises shall be restored to its original condition, at no cost to Lessee, upon the completion of any construction.

27. REQUIRED PROVISIONS.

27.1. The following provisions are included in this Lease:

27.1.1 In furnishing services to the public, Lessee shall not discriminate against any person or class of persons by reason of race, color, creed, or national origin, and Lessee shall otherwise provide such services on a fair, equal, and not unjustly discriminatory basis to all users thereof.

27.1.2 Lessee shall charge fair, reasonable, and not unjustly discriminatory prices for each unit for service, provided, that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

28. ARCHEOLOGICAL OR CULTURAL RESOURCES.

In the event any archeological or cultural resources are discovered on the Premises, Lessor shall use its best efforts to expedite any necessary actions with respect thereto, at Lessor's sole cost and expense; provided, however, that in the event the necessary actions with respect to any archeological or cultural resources exceeds or is estimated to exceed \$1,000.00, Lessee shall be entitled to terminate this Lease upon ten (10) days prior written notice to Lessor.

29. DEFAULT BY LESSOR.

In the event of any alleged breach by Lessor of its covenants contained in this Lease, Lessee shall have available all rights and remedies provided at law or in equity, subject to the terms and conditions of this Lease; provided, however, Lessee may not exercise any such right or remedy unless Lessee has notified Lessor by written notice of such alleged default, and Lessor has not cured such default within the thirty (30) day period subsequent to receipt of such notice or, in the event such alleged default is of such a nature that it cannot reasonably be cured within such thirty (30) day period, Lessor has failed to cure such alleged default with all due diligence. Notwithstanding anything to the contrary contained in this Lease, in no event shall Lessee be entitled to terminate this Lease or to abate or offset any installment of Base Rent or any other payments to be made by Lessee hereunder.

30. MISCELLANEOUS.

30.1 <u>Personal Liability</u>. No member of or employee of either Party shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Lease because of any breach thereof or because of its execution or attempted execution.

30.2 <u>No Waiver</u>. No provision of this Lease may be waived or modified except by a writing signed by the Party against whom such waiver or modification is sought.

30.3 <u>Non-Waiver of Rights</u>. No waiver or default by Lessor of any of the terms, conditions, covenants or agreements hereof to be performed, kept or observed by Lessee shall be construed or act as a waiver of any subsequent default of any of the terms, covenants, conditions or agreements herein contained to be performed, kept or observed by Lessee, and Lessor shall not be restricted from later enforcing any of the terms and conditions of this Lease.

30.4 <u>Amendment</u>. Only a written instrument executed by the Parties may amend this Lease.

30.5 <u>Invalid Provisions</u>. Should any provision of this Lease or any application thereof be held invalid by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, unless one or both Parties would be substantially and materially prejudiced.

30.6 <u>Litigation Expenses</u>. In the event of litigation between Lessor and Lessee, the prevailing Party shall be entitled to recover its attorney's fees and all costs and expenses of litigation, including witness fees, expert witness fees, and court costs.

30.7 <u>Headings</u>. The headings contained herein are for convenience in reference only and are not intended to define or limit the scope of this Lease or any term thereof.

30.8 <u>Entire Agreement</u>. This Lease, including exhibits attached hereto at the time of its execution, constitutes the entire agreement between the Parties hereto and supersedes all prior negotiations, understandings and agreements between the Parties concerning such matters.

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31. INCORPORATION OF RECITALS.

The recitals set forth herein are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

32. SIGNATURE

The parties have executed this Lease as of the Effective Date.

[SIGNATURES ON FOLLOWING PAGE]

LESSOR:

CITY OF HOLBROOK, an Arizona municipal corporation

By

Kathleen Smith, Mayor

ATTEST:

Lisa Hunt, City Clerk

APPROVED AS TO FORM:

Allen Quist, City Attorney

ACKNOWLEDGEMENT

STATE OF ARIZONA COUNTY OF NAVAJO

On this ______ day of ______, 2024, before me personally appeared Kathleen Smith, the Mayor of the CITY OF HOLBROOK, ARIZONA, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the Property Lease Agreement on behalf of the City.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

(Seal and Expiration Date)

Notary Public in and for the State of Arizona

[ADDITIONAL SIGNATURE ON FOLLOWING PAGE]

LESSEE:



STATE OF ARIZONA COUNTY OF NAVAJO

On this ______ day of ______, 20___, before me personally appeared whose identities were proven to me on the basis of satisfactory evidence to be the persons they claim to be, and acknowledged that they signed the Property Lease Agreement.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

(Seal and Expiration Date)

Notary Public in and for the State of Arizona

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Exhibit A

DESCRIPTION OF PREMISES

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Holbrook Townsite: Lots 14,15,16,17,18,19,20, Block 13

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Taxes

\$ District Charges 🗠 Sales 🖽 Other

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Ownership:

Holbrook City Of Po Box 970

Holbrook AZ 86025-0970

Last Recording: 12/08/1987 for \$16,800.00

Location:

Site:

Size: 0.62

PLSS TRS: T17N R21E S06

Tax Area: 0350

Assessor Description: 0

Holbrook Townsite:Lots 14,15,16,17,18,19,20, Block 13

Assessment Method:

Type: Exempt

Approach: Market

Ratio: 15.00%

Exemption: Full Exemption - FCV

Exempt Amount: \$825.00

Legal Class: Vacant/Agricultural Land

Assessment:

Land Value: \$5,497.00

Improvement: \$0.00

Full Cash Value: \$5,497.00

Full Cash Assessed: \$0.00

Limited Value: \$5,469.00

Limited Value Assessed: \$0.00

