ENERGY PROJECT COOPERATIVE AGREEMENT

By and between

BEXLEY, COLUMBUS, DUBLIN, GROVE CITY, HILLIARD, PERRY TOWNSHIP, WHITEHALL, WORTHINGTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:
COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.;

HENDERSON PARTNERS, LLC;

COLUMBUS-FRANKLIN COUNTY FINANCE AUTHORITY; and

CITY OF COLUMBUS, OHIO

Dated as of [__________], 2018

BRICKER & ECKLER LLP

ENERGY PROJECT COOPERATIVE AGREEMENT

THIS ENERGY PROJECT COOPERATIVE AGREEMENT (the **Agreement**) is made and entered into as of [________], 2018, by and among the BEXLEY, COLUMBUS, DUBLIN, GROVE CITY, HILLIARD, PERRY TOWNSHIP, WHITEHALL, WORTHINGTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., doing business under the registered trade name COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., a nonprofit corporation and special improvement district duly organized and validly existing under the laws of the State of Ohio (the **State**) (the **ESID**), HENDERSON PARTNERS, LLC, a limited liability company duly organized and validly existing under the laws of the State (the **Owner**), the COLUMBUS-FRANKLIN COUNTY FINANCE AUTHORITY, a port authority and body corporate and politic duly organized and validly existing under the laws of the State (together with its permitted assignees and participants, the **Finance Authority**), and the CITY OF COLUMBUS, OHIO, a municipal corporation duly organized and validly existing under the constitution and laws of the State and its Charter (the **City**) (the capitalized terms used in this Agreement and not defined in the preamble and recitals have the meanings stated in **Exhibit A** to this Agreement):

A. The ESID was created under Ohio Revised Code Chapters 1702 and 1710 and established pursuant to Resolution No. 0261X-2015 of the Council of the City of Columbus, Ohio approved on November 23, 2015. Pursuant to the same action, the Columbus Regional Energy Special Improvement District Program Plan (as amended and supplemented from time to time, the **Plan**) was adopted as a plan for public improvements and public services under Ohio Revised Code Section 1710.02(F).

B. The ESID is an energy special improvement district and nonprofit corporation duly organized and validly existing under the laws of the State of Ohio to further the public purpose of implementing special energy improvement projects pursuant to the authority in Ohio Revised Code Chapter 1710 and Article VIII, Section 2o of the Ohio Constitution.

C. On [_______], 2018, by its Resolution No. [___]-2018, the City Council of the City (the **City Council**) approved the Petition for Special Assessments for Special Improvement Projects and Affidavit (the **Petition**) submitted by the Owner to the City, together with the Supplement to Plan for 4400 North High Street, Columbus, Ohio Project (the **Supplemental Plan**), as a supplement to the Plan.

D. Pursuant to the Plan, the ESID, among other services, shall assist property owners, whether private or public, who own real property within participating political subdivisions to obtain financing for special energy improvement projects.

E. In order to obtain financing for special energy improvement projects and to create special assessment revenues available to pay and repay the costs of special energy improvement projects, the Petition requested that the City Council levy Special Assessments against the Owner's property as more fully described in the Supplemental Plan.

F. The special energy improvement projects will be financed through bonds issued by the Ohio Air Quality Development Authority (the **OAQDA**), which bonds (the **OAQDA Bonds**) will be purchased by the Finance Authority subject to the terms and conditions of the Bond Purchase Agreement between the Finance Authority, the Owner, and the OAQDA dated as of [_________] (the **Bond Purchase Agreement**). Disbursements of the Project Advance under this Agreement will constitute purchases of equal principal amounts of the OAQDA Bonds, and payments of moneys received as Special Assessments from the City to the Finance Authority, in accordance with this Agreement and with the Special Assessment Agreement, will constitute payment of principal of, and interest and any premium on (**Bond Service Charges**), the OAQDA Bonds.

F. The ESID, the Owner, the Finance Authority, and the City (collectively the **Parties**, and each, a **Party**) each have determined that the most efficient and effective way to implement the financing, acquisition, construction, equipment, improvement, and installation of energy special improvement projects and to further the public purposes set forth above is through this Agreement, pursuant to the Act and on the terms set forth in this Agreement, with (i) the Finance Authority providing the Project Advance to finance the costs of the special energy improvement projects described in the Supplemental Plan; (ii) the ESID and the Owner cooperating to acquire, construct, equip, improve, and install special energy improvement projects; (iii) the Owner agreeing to make Special Assessment payments to the City in an aggregate amount that will provide revenues sufficient to pay or repay the permitted costs of the special energy improvement projects; (iv) the City agreeing to assign and transfer all Special Assessment payments actually received by the City to the Finance Authority to repay the Project Advance, which Special Assessment payments shall constitute Bond Service Payments on the OAQDA Bonds; (v) the ESID agreeing to assign, transfer, and set over to the Finance Authority any of its right, title, or interest in and to the Special Assessments which it may have by operation of law, this Agreement, or otherwise; provided that a portion of the Special Assessments may be retained by, or payable to, the City or the ESID, all pursuant to and in accordance with this Agreement.

G. The Parties each have full right and lawful authority to enter into this Agreement and to perform and observe its provisions on their respective parts to be performed and observed, and have determined to enter into this Agreement to set forth their respective rights, duties, responsibilities, obligations, and contributions with respect to the implementation of special energy improvement projects within the ESID.

NOW, THEREFORE, in consideration of the promises and the mutual representations, warranties, covenants, and agreements contained in this Agreement, the Parties agree as follows; provided, that any obligation of the ESID created by or arising out of this Agreement never shall constitute a general obligation, bonded indebtedness, or a pledge of the general credit of the ESID, or give rise to any pecuniary liability of the ESID, but any such obligation shall be payable solely from the Special Assessments actually received by the ESID, if any; and provided, further, that any obligation of the City created by or arising out of this Agreement never shall constitute a general obligation, bonded indebtedness, or a pledge of the general credit of the City, or give rise to any pecuniary liability of the City, but any such obligation shall be payable solely from the Special Assessments actually received by the City, if any:

ARTICLE I: DEFINITIONS

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, words and terms used in this Agreement shall have the meanings set forth in **Exhibit A** to this Agreement unless the context or use clearly indicates another meaning or intent. Definitions shall apply equally to both the singular and plural forms of any of the words and terms. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise.

Section 1.2. Interpretation. Any reference in this Agreement to the ESID, the ESID Board, the Owner, the City, the City Council, the Finance Authority, or the Board of Directors of the Finance Authority, or to any member or officer of any of the foregoing, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Ohio Revised Code or any other legislation or to any statute of the United States of America, includes that section, provision, or chapter as amended, modified, revised, supplemented, or superseded from time to time; provided, however, that no amendment, modification, revision, supplement, or superseding section, provision, or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

Section 1.3. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit, or describe the scope or intent of any of this Agreement's Articles, Sections, subsections, paragraphs, subparagraphs or clauses.

ARTICLE II: COOPERATIVE ARRANGEMENTS; ASSIGNMENT OF SPECIAL ASSESSMENTS

Section 2.1. Agreement Between the City, the ESID, and the Finance Authority. The Owner and the ESID have requested the assistance of the Finance Authority and the City in the financing of special energy improvement projects within the ESID. For the reasons set forth in this Agreement's Recitals—which Recitals are incorporated into this Agreement by this reference as a statement of the public purposes of this Agreement and the intended arrangements among the Parties—the City and the ESID have requested the assistance and cooperation of the Finance Authority in the collection and payment of Special Assessments in accordance with this Agreement. The Parties intend this Agreement to be, and it shall be, an agreement among the Parties to cooperate in the financing, acquisition, construction, equipping, improvement, and installation of "special energy improvement projects," pursuant to Ohio Revised Code Chapter 1710, and as that term is defined in Ohio Revised Code Section 1710.01(I). The Parties intend this Agreement's provisions to be, and they shall be construed as, agreements to take effective cooperative action and to safeguard the Parties' interests.

Upon the considerations stated above and upon and subject to the terms and conditions of this Agreement, the Finance Authority, on behalf of the Parties, shall make the Project Advance available to the Owner to pay the costs of the Project. The City and the ESID shall assign, transfer, set over, and pay the Special Assessments actually received by the City or the ESID, respectively, to the Finance Authority, to pay the costs of the Project at the times and in the manner provided in this Agreement, and such Special Assessments transferred to the Finance Authority shall constitute Bond Service Payments on the OAQDA Bonds; provided, however, that the City, the ESID, and the Finance Authority intend that the City shall receive all Special Assessments from the County Treasurer and shall transfer, set over, and pay all Special Assessments received from the County Treasurer directly to the Finance Authority. The City, the ESID, and the Finance Authority further intend and agree that the Finance Authority shall pay to the ESID, out of the Special Assessments received by the Finance Authority, a semi-annual fee of $211.98 for the ESID's administrative expenses; provided, however, that if the amount of Special Assessments received by the Finance Authority in any year are insufficient to pay the principal of, and interest on the Project Advance due in that year and the semi-annual fee of $211.98 due to the ESID, the Special Assessments received shall first be applied to the payment of interest on the Project Advance, then to the repayment of the principal of the Project Advance, and then to the payment of the semi-annual fee due to the ESID.

Notwithstanding anything in this Agreement to the contrary, any obligations of the City under this Agreement, including the obligation to transfer the Special Assessments received by the City to the Finance Authority, shall be a special obligation of the City and shall be required to be made only from Special Assessments actually received by or on behalf of the City, if any. The City's obligations under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The City's obligations under this Agreement do not and shall not represent or constitute a debt or pledge of the City's faith and credit or taxing power, and the ESID, the Owner, and the Finance Authority do not have and shall not have any right to have taxes levied by the City for the transfer of the Special Assessments.

Section 2.2. Special Assessments; City Transfer of Special Assessments.

(a) The Special Assessment Proceedings. The City has duly enacted the Special Assessment Proceedings.

Pursuant to Ohio Revised Code Section 727.33, the City has certified the Special Assessments to the County Auditor for collection, and the Parties agree that the County Auditor shall collect the unpaid Special Assessments with and in the same manner as other real property taxes and pay the amount collected to the City. The Parties intend that the County Auditor and the County Treasurer shall have the duty to collect the Special Assessments through enforcement proceedings in accordance with applicable law.

(b) Collection of Delinquent Special Assessments. Subject to the City having received written notice of any Special Assessment delinquency, the ESID and the Finance Authority are hereby authorized to take any and all actions as assignees of and, to the extent required by law, in the name of, for, and on behalf of, the City to collect delinquent Special Assessments levied by the City pursuant to the Special Assessment Act and the Special Assessment Proceedings and to cause the lien securing the delinquent Special Assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings. The proceeds of the enforcement of any such lien shall be deposited and used in accordance with this Agreement.

(c) Prepayment of Special Assessments. The Parties agree that the Special Assessments assessed against the Property and payable to the City pursuant to the Special Assessment Act and the Special Assessment Proceedings may be prepaid to the Finance Authority by the Owner, by making payment to the Finance Authority in accordance with Section 4.7 of this Agreement. Any such prepayments shall constitute Bond Service Payments (including, as applicable, prepayment of Bond Service Payments) on the OAQDA Bonds. Except as set forth in this Section 2.2(c) and Section 4.7 of this Agreement, the Owner shall not prepay any Special Assessments. Notwithstanding the foregoing, if the Owner attempts to cause a prepayment of the Special Assessments by paying to the County Treasurer any amount as a full or partial prepayment of Special Assessments, and if the City shall have knowledge of the same, the City immediately shall notify the Finance Authority, and, unless provided the express written consent of the Finance Authority, the City shall not cause any reduction in the amount of Special Assessments. Except as specifically provided in this Agreement to the contrary, no other action pursuant to any provision of this Agreement shall abate in any way the payment of the Special Assessments by the owners of property or the transfer of the Special Assessments by the City to the Finance Authority.

(d) Reduction of Special Assessments. The Parties agree that the Special Assessments may be subject to reduction, but only upon the express written consent or instruction of the Finance Authority. If the Owner causes the Special Assessments to be prepaid in accordance with Sections 2.2(c) and 4.7 of this Agreement, the Finance Authority shall revise the Special Assessments to be collected such that, following such reduction, the amount of Special Assessments remaining to be paid shall be equal to the amounts necessary to pay, as and when due, and as Bond Service Payments on the OAQDA Bonds, the remaining outstanding principal of the Project Advance, together with interest at the annual rate of 5.00%, a $211.98 semi-annual administrative fee to the ESID, and a County Auditor collection fee on each annual installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Auditor pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties. Upon the City Department of Development's receipt of the Investor's express written consent or instruction, the City's Department of Development shall instruct the City Auditor's Office to certify to the County Auditor, prior to the last date in the then-current tax year on which municipal corporations may certify special assessments to the County Auditor, a reduction in the amount of Special Assessments to be collected such that the remaining Special Assessments to be collected are equal to the amounts certified by the Finance Authority. The Parties agree that the Investor may certify any reduction required by this Section 2.2(d) to the County Auditor directly after requesting and receiving the City's Department of Development's consent to certify the reduction on the City's behalf. Notwithstanding anything in this Agreement to the contrary, the City shall not cause any reduction in the amount of Special

Assessments without the prior written consent or instruction of the Finance Authority.

(e) Assignment of Special Assessments. The City agrees that it shall establish its funds for the collection of the Special Assessments as separate funds maintained on the City's books and records and to be held in the custody of a bank with which the City maintains a depository relationship. The City hereby assigns to the Finance Authority all of its right, title and interest in and to: (i) the Special Assessments received by the City under this Agreement, and (ii) the City's special assessment funds established for the Project; provided, however, such assignment shall not relate to, and the Finance Authority shall have no right, title or interest in, any interest earnings which may accrue to the City in respect of the Special Assessments while those Special Assessments are in the City's custody. The City further shall transfer, set over, and pay the Special Assessments to the Finance Authority in accordance with this Agreement. The payment of Special Assessments by the City to the Finance Authority shall constitute Bond Service Payments on the OAQDA Bonds. The ESID acknowledges and consents to the City's assignment of the Special Assessments to the Finance Authority. The Parties agree that each of the City, the ESID, and the Finance Authority, as assignee of the Special Assessments, is authorized to take any and all actions, whether at law, or in equity, to collect delinquent Special Assessments levied by the City pursuant to law and to cause the lien securing any delinquent Special Assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings. All Parties agree to provide notice to the other Parties within a reasonable period of time following any actions filed to enforce the lien securing any delinquent Special Assessments if such notice is not provided through such action.

(f) Transfer of Special Assessments. The parties anticipate that semi-annual installments of the Special Assessments will be paid to the City by the County Auditor and the County Treasurer in accordance with Ohio Revised Code Chapters 319, 321, 323, and 727, which, without limiting the generality of the foregoing, contemplates that the County Auditor and County Treasurer will pay the Special Assessments to the City on or before May 1 and November 1 of each year. Immediately upon receipt of any moneys received by the City as Special Assessments, but in any event not later than thirty (30) calendar days after the receipt of such moneys and the corresponding final settlement from the County Auditor, the City shall deliver to the Finance Authority all such moneys received by the City as Special Assessments. The payment of Special Assessments by the City to the Finance Authority shall constitute Bond Service Payments on the OAQDA Bonds. The Finance Authority may from time to time provide written payment instructions to the City for payment of Special Assessments to the Finance Authority or its trustee or other designee by check, wire instructions, or other means. If at any time during the term of this Agreement the County Auditor agrees, on behalf of the City, to disburse the Special Assessments directly to the Finance

Authority or its trustee or other designee pursuant to instructions or procedures agreed upon by the County Auditor and the Finance Authority, then, upon each transfer of an installment of the Special Assessments from the County Auditor to the Finance Authority or its trustee or other designee, the City shall be deemed to have satisfied all of its obligations under this Agreement to transfer that installment of the Special Assessments to the Finance Authority.

(g) Repayment of Project Advance. The Finance Authority shall credit, on the dates shown on the Repayment Schedule (which is attached to and incorporated into this Agreement as **Exhibit B**), Special Assessments in the amounts shown on the Repayment Schedule to the payment of accrued interest on the Project Advance and to the repayment of the portion of the principal of the Project Advance scheduled to be repaid on such date. The Finance Authority, on the dates shown on the Repayment Schedule, further shall pay to the ESID, after the payment of accrued interest on the Project Advance and the repayment of the portion of principal of the Project Advance scheduled to be repaid on such date, a semi-annual fee of $211.98 or such lesser amount as may be available from the Special Assessments on the applicable date after the payment of accrued interest on the Project Advance and the repayment of the portion of the principal of the Project Advance scheduled to be repaid on such date. The Parties acknowledge and agree that the County Auditor may calculate, charge, and collect a fee on each annual installment of the Special Assessments pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties, and that such fee shall be paid to the County Auditor with the Special Assessments, and that the County Auditor will retain such fee.

Section 2.3. Obligations Unconditional; Place of Payments. The City's obligation to transfer the Special Assessments to the Finance Authority under Section 2.2 of this Agreement shall be absolute and unconditional, and the City shall make such transfers without abatement, diminution, or deduction regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment, or counterclaim which the City may have or assert against the Finance Authority, the ESID, or the Owner; provided, however, that the City's obligation to transfer the Special Assessments is limited to the Special Assessments actually received by or on behalf of the City, and nothing in this Agreement shall be construed to obligate the City to transfer or pledge, and the City shall not transfer or pledge any special assessments not related to the ESID.

Section 2.4. Appropriation by the City; No Further Obligations. Upon the Parties' execution of this Agreement, all of the Special Assessments received or to be received by the City shall be deemed to have been appropriated to pay the City's obligation under this Agreement to pay to the Finance Authority all Special Assessments received by the City. During the years during which this Agreement is in effect, the City shall take such further actions as may be necessary or desirable in order to appropriate the transfer of the Special Assessments actually received by the City in such amounts and at such times as will be sufficient to enable the City to satisfy its obligation under this Agreement to pay to the Finance Authority all Special Assessments received by the City; provided that the City shall not be responsible for the costs and expenses of any collection or enforcement actions, except to the extent of any Special Assessments actually received by the City; and provided further that nothing in this paragraph shall be construed as a waiver of the City's right to be indemnified pursuant to Section 6.4 of this Agreement or pursuant to the Special Assessment Agreement. The City shall have no obligation, legally, morally or otherwise, to use or apply to the payment of the Special Assessments any funds or revenues from any source other than the moneys received by the City as Special Assessments.

Section 2.5. Security for Advanced Funds. To secure the transfer of the Special Assessments by the City to the Finance Authority, and in accordance with the Special Assessment Act and the Special Assessment Proceedings, the ESID hereby assigns, transfers, sets over, and shall pay all of its right, title, and interest in and to the Special Assessments related to the ESID actually received by or on behalf of the City to the Finance Authority. The Owner and the City agree and consent to that assignment.

ARTICLE III: REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 3.1. The City's Representations and Warranties. The City represents and warrants that:

(a) It is a municipal corporation, duly organized, and validly existing under the Constitution and applicable laws of the State.

(b) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the City's knowledge, that execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to the City and does not and will not conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound.

(c) It, by proper action, has duly authorized, executed, and delivered this Agreement, and the City has taken all steps necessary to establish this Agreement and the City's covenants and agreements within this Agreement, as valid and binding obligations of the City, enforceable in accordance with their terms.

(d) To its knowledge, there is no litigation pending or threatened against or by the City in which an unfavorable ruling or decision would materially adversely affect the City's ability to carry out its obligations under this Agreement.

(e) The assignment contained in Section 2.2(e) is a valid and binding obligation of the City with respect to the Special Assessments received by the City under this Agreement.

Section 3.2. The ESID's Representations and Warranties. The ESID represents and warrants that:

(a) It is a nonprofit corporation and special improvement district, duly organized, and validly existing under the Constitution and applicable laws of the State.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the ESID that would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the ESID's knowledge, that execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to the ESID and does not and will not conflict with or result in a default under any agreement or instrument to which the ESID is a party or by which it is bound.

(d) It, by proper action, duly has authorized, executed, and delivered this Agreement, and the ESID has taken and all steps necessary to establish this Agreement and the ESID's covenants and agreements within this Agreement as valid and binding obligations of the ESID, enforceable in accordance with their terms.

(e) There is no litigation pending, or to its knowledge threatened, against or by the ESID in which an unfavorable ruling or decision would materially adversely affect the ESID's ability to carry out its obligations under this Agreement.

(f) The assignment contained in Section 2.5 is a valid and binding obligation of the ESID with respect to the ESID's right, title and interest in the Special Assessments under this Agreement.

Section 3.3. <u>The Owner's Representations and Warranties</u>. The Owner represents and warrants that:

(a) It is a limited liability company duly organized, validly existing and in full force and effect under the laws of the State. It has all requisite power to conduct its business as presently conducted and to own, or hold under lease, its assets and properties, and, is duly qualified to do business in all other jurisdictions in which it is required to be qualified, except where failure to be so qualified does not have a material adverse effect on it, and will remain so qualified and in full force and effect during the period during which Special Assessments shall be assessed, due, and payable.

(b) It, by proper action, duly has authorized, executed, and delivered this Agreement, and it has taken all steps necessary to establish this Agreement and its covenants and agreements within this Agreement as valid and binding obligations, enforceable in accordance with their terms

(c) There are no actions, suits or proceedings pending or, to its knowledge, threatened against or affecting it, the Property, or the Project that, if adversely determined, would individually or in the aggregate materially impair its ability to perform any of its obligations under this Agreement, or materially adversely affect its financial condition (an **Action**), and during the term of this Agreement, the Owner shall promptly notify the Finance Authority of any Action commenced or to its knowledge threatened against it.

(d) It is not in default under this Agreement, and to its knowledge no condition, the continuance in existence of which would constitute a default under this Agreement, exists. It is not in default in the payment of any Special Assessments or under any agreement or instrument related to the Special Assessments which has not been waived or allowed.

(e) Except for any financing of the Property and the lien related thereto that the Owner has previously disclosed in writing, it has made no contract or arrangement of any kind, other than this Agreement, which has given rise to, or the performance of which by the other party thereto would give rise to, a lien or claim of lien on the Project, except inchoate statutory liens in favor of suppliers, contractors, architects, subcontractors, laborers or materialmen performing work or services or supplying materials in connection with the acquiring, constructing, equipping, installing, and improving of the Project.

(f) No representation or warranty made by it contained in this Agreement, and no statement contained in any certificate, schedule, list, financial statement or other instrument furnished to the Finance Authority or the ESID by it or on its behalf contained, as of the date thereof, any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

(g) Since the date of the most recent financial statements of the Owner provided to the Finance Authority, there has been no material adverse change in the financial condition of the Owner, nor has the Owner mortgaged, pledged or granted a security interest in or encumbered the Property since such date, except as otherwise disclosed to the Finance Authority in writing, and the financial statements which have been delivered to the Finance Authority prior to the date of this Agreement are true, correct, and current in all material respects and fairly represent the respective financial conditions of the subjects of the financial statements as of the respective dates of the financial statements.

(h) The Owner has good and marketable title to its Property, subject only to existing liens, pledges, encumbrances, charges or other restrictions of record previously disclosed by the Owner to the Finance Authority in writing, liens for taxes not yet due and payable, and minor liens of an immaterial nature.

(i) The Project complies in all material respects with all applicable zoning, planning, building, and other regulations of each Governmental Authority having jurisdiction of the Project, and all necessary permits, licenses, consents and permissions necessary for the Project have been or will be obtained. The Project complies in all material respects with all applicable environmental regulations of each Governmental Authority having jurisdiction of the Project.

(j) The plans and specifications for the Project are satisfactory to the Owner, have been reviewed and approved by the general contractor for the Project, the tenants under any leases which require approval of the plans and specifications, the purchasers under any sales contracts which require approval of the plans and specifications, any architects for the Project, and, to the extent required by applicable law or any effective restrictive covenant, by all Governmental Authorities and the beneficiaries of any such covenants; all construction of the Project, if any, already performed on the Property has been performed on the Property in accordance with such approved plans and specifications and the restrictive covenants applicable to the plans and specifications; there are no structural defects in the Project or violations of any requirement of any Governmental Authorities with respect to the Project; the planned use of the Project complies with applicable zoning ordinances, regulations, and restrictive covenants affecting the Property as well as all environmental, ecological, landmark and other applicable laws and regulations; and all requirements for such use have been satisfied.

(k) The Owner has the Required Insurance Coverage and will maintain the Required Insurance Coverage at all times during the term of this Agreement, while any principal of or interest on the Project Advance remains outstanding, and while any Special Assessments remain to be paid. Any return of insurance premium or dividends based upon the Required Insurance Coverage shall be due and payable solely to the Owner or its Lender pursuant to any agreements between the Owner and its Lender, unless such premium shall have been paid by the Finance Authority, in accordance with the distribution priority specified in Section 4.3.

(l) Each Disbursement Request Form presented to the Finance Authority, and the receipt of the funds requested by the Disbursement Request Form, shall constitute an affirmation that the representations and warranties contained in this Agreement remain true and correct as of the date of the Disbursement Request Form and the receipt of the funds requested by the Disbursement Request Form.

(m) Each of the Property and the Project are, and at all times during the term of this Agreement, while any principal of or interest on the Project Advance remain outstanding, and while any Special Assessments remain to be paid, used solely for the commercial purposes disclosed by the Owner to the Finance Authority in writing.

(n) The Project and the plans and specifications for the Project have been developed pursuant to an energy audit prepared by Energility, LLC, which energy audit demonstrates that the Project is expected to generate $71,027 in annual energy savings.

(o) Each of the components of the Project is a qualified "special energy improvement project" pursuant to the definition of that term in Ohio Revised Code Section 1710.01(I).

(p) At all times during the term of this Agreement, while any principal of or interest on the Project Advance remain outstanding, and while any Special Assessments remain to be paid, the Owner shall comply in all respects with the Special Assessment Act and the Special Assessment Proceedings and shall take any and all action necessary to remain in compliance with the Special Assessment Act and the Special Assessment Proceedings.

Section 3.4. The Owner's Additional Agreements. The Owner agrees that:

(a) It shall not transfer or convey any right, title, or interest, in or to the Property and the Project, except after giving prompt notice of any such transfer or conveyance to the Finance Authority; provided, however, that the foregoing restrictions shall not apply to the grant or conveyance of any leasehold interests, mortgage interest, or lien interest, except as may be otherwise provided in this Agreement. Before or simultaneous with any such transfer or conveyance, the Owner shall (i) execute, cause the transferee or purchaser to execute, and deliver to the Finance Authority, the City, and the ESID a fully executed "Assignment and Assumption of Energy Project Cooperative Agreement" in the form attached to and incorporated into this Agreement as **Exhibit G**; and (ii) execute, cause the transferee or purchaser to execute, and deliver to the Finance Authority, an assignment of all construction contracts related to the Project. The Parties acknowledge and agree that the Assignment and Assumption of Energy Project Cooperative Agreement includes the assignment and assumption of the Special Assessment Agreement and the Owner Consent.

(b) It shall pay when due all taxes, assessments, service payments in lieu of taxes, levies, claims and charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Property, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on any portion of the Property. The Owner shall furnish the Finance Authority, upon reasonable request, with proof of payment of any taxes, governmental charges, utility charges, insurance premiums or other charges required to be paid by the Owner under this Agreement. The Parties acknowledge and agree that the foregoing obligation is in addition to the Owner's obligation to pay the Special Assessment. The foregoing notwithstanding, the Owner may contest the validity of any such taxes, assessments, service payments in lieu of taxes, levies, claims and charges other than the Special Assessments and, pending the determination of such contest, may postpone payment of any such contested imposition(s).

(c) It shall not, without the prior written consent of the Finance Authority, cause or agree to the imposition of any special assessments, other than the Special Assessments, on the Property for the purpose of paying the costs of "special energy improvement projects," as that term is defined in Ohio Revised Code Section 1710.01(I), as amended and in effect at the time.

(d) It shall promptly pay and discharge all claims for labor performed and material and services furnished in connection with the acquisition, construction, equipping, installation, and improvement of the Project; provided, however, that the Owner may contest the validity of any such claims and, pending the determination of such contest, may postpone payment of the contested claim(s).

(e) It promptly shall notify the Finance Authority of any material damage or destruction to the Project.

(f) Upon the reasonable request of the Finance Authority, it shall take any actions and execute any further certificates, instruments, agreements, or documents as shall be reasonably necessary in connection with the performance of this Agreement and with the transactions, obligations, and undertakings contained in this Agreement.

(g) Except in compliance with applicable federal, state and local environmental laws, it does not and will not engage in operations that involve the generation, manufacture, refining, transportation, treatment, storage or handling of hazardous materials or hazardous wastes, as defined in applicable state law, or any other federal, state or local environmental laws or regulations, and neither the Property nor any other of its premises has been so used previously, in each case, except as previously disclosed in writing to the Finance Authority or as set forth in the Environmental Site Assessment performed by [__________] and dated [_________] (the **ESA**). Except as set forth in the ESA, there are no underground storage tanks located on the Property; there is no past or present non-compliance with environmental laws, or with permits issued pursuant thereto, in connection with the Property, which has not been fully remediated in accordance with environmental laws; and there is no environmental remediation required (or anticipated to be required) with respect to the Property. Except as set forth in the ESA, the Owner does not have actual knowledge of, and has not received, any written notice or other communication from any person (including but not limited to a governmental entity) relating to hazardous substances or remediation of hazardous substances, of possible liability of any person pursuant to any environmental law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with the foregoing.

(h) It shall not cause the Property to be subdivided, platted, or otherwise separated into any additional parcels (a "subdivide") in the records of the County Auditor. While no subdivide is anticipated for such development, in the event it is reasonably necessary in order to proceed with such development to cause a reasonable subdivide which would otherwise violate this Section 3.4(h) or any other provision of this Agreement the Owner may request that the Finance Authority waive the application of this Section 3.4(h) with respect to that subdivide, upon which the Finance Authority, in its reasonable discretion, may waive the application of this Section 3.4(h) to that subdivide. Any waiver granted by the Finance Authority under the previous sentence shall be limited to the specific subdivide waived by the Finance Authority, and the Finance Authority's waiver shall not be construed to be, and shall not be, a waiver of any other subdivide or any other violation of this Section 3.4(h) or any other provision of this Agreement. In the event the Property is subdivided under this Section 3.4(h), the Owner has requested under the Petition and hereby agrees that the Special Assessments shall be allocated among the resulting parcels such that the following portions of the Special Assessments are allocated to the parcels containing each of the buildings currently situated on the Property as follows:

Building	**Percentage of Special Assessments**
4380 North High Street* (43,747* sq. ft.)	100%
4416–4422 North High Street* (5,770* sq. ft.)	0%
4376–4386 North High Street* (5,174* sq. ft.)	0%

Section 3.5. Federal Law Requirements. The ESID and the Owner acknowledge and agree that pursuant to the Additional Reserve Agreement (the **Additional Reserve Agreement**) between the Finance Authority and the Director of Development Services of the State of Ohio (**DSA**), DSA has provided additional reserves (the **Additional Reserves**) for the Project Advance. The ESID and the Owner further acknowledge and agree that the Additional Reserves constitute federal funds provided under an award to DSA from the U.S. Department of Energy under the Catalog of Federal Domestic Assistance Number 81.041, and that the Finance Authority is authorized under Title 10 of the Code of Federal Regulations Part 420 to use the Additional Reserves as loan loss reserves under such terms and conditions as DSA may determine. The ESID and the Owner further acknowledge and agree that the Additional Reserve Agreement sets such terms and conditions, and that this Agreement is to be interpreted consistent with such Additional Reserve Agreement, provided that the Additional Reserve Agreement shall control in the case of any conflict with this Agreement.

In accordance with Article 2, Section D of the Additional Reserve Agreement, the Owner shall provide to the ESID and the Finance Authority, when and as requested by the ESID and the Finance Authority, any and all information the ESID and the Finance Authority shall determine is necessary to complete reporting required by (i) the State Energy Program (**SEP**) of the American Recovery and Reinvestment Act of 2009 (the **ARRA**) and (ii) the Additional Reserve Agreement. Without limiting the generality of the preceding sentence, Owner hereby agrees to provide the following information:

(a) During the installation of the Project, monthly financial information and progress reports, which shall cover expenditures, goals accomplished, milestones met, and any performance deficiencies or delays during the immediately preceding month;

(b) Following the completion of the installation of the Project, a project completion report, containing a written notification that the Project has been completed, documentation reflecting the Owner's closeout inventory of real and personal

* As shown in the records of the County Auditor of Franklin County, Ohio on September 4, 2018

property partially or wholly acquired by the Project Advance and a statement of economic impact, including job creation and retention data;

(c) During and following the completion of the installation of the Project, for all years during which any principal or interest is outstanding on the Project Advance, annual, cumulative, to-date values on the following metrics: (1) verification of SEP-ARRA reporting, (2) annual energy consumption from the completed Project, and (3) any other information that may be requested by DSA; and

(d) During and following the completion of the installation of the Project, information related to the economic impacts of the Project, including, without limitation, increased production, competitiveness, community impact, and job creation and retention, which includes installation hours, new jobs directly created, and jobs retained at the site.

The Owner shall preserve all financial and accounting records pertaining to this Agreement during this Agreement's term, and for any further period that may be required by the Internal Revenue Code of 1986, as amended. During such retention period, DSA or the Finance Authority, upon reasonable notice, shall have the right to audit the records to the extent authorized and permitted by law. The Owner may retain all records in original or electronic form, provided that for electronic records, an off-site duplicate record is preserved.

During the term of this Agreement, the Owner shall comply with all applicable provisions of the SEP-ARRA and the attendant federal regulations, including, without limitation ARRA Section 1605 (Buy American / Federal Acquisition Regulations, or FAR) Clauses 52.225-21, 52.225-22, and 52.225-24; ARRA Section 1512 (Reporting Requirements), including FAR Clause 52.204-11; ARRA Section 1553 (Whistleblower Protection), including FAR Clause 52.203-15; and ARRA Sections 902, 1514, and 1515 (General Accountability Office and Inspector General Audits and Access to Records), including FAR Clauses 52.212-5, 52.214-26, and 52.215-2. A summary of such provisions are attached to this Agreement as **Exhibit H**.

ARTICLE IV: PROJECT ADVANCE; CONSTRUCTION OF PROJECT; REPAYMENT

Section 4.1. Project Advance. The Finance Authority has made available to the Owner the Project Advance in the amount of $940,647.21. The Finance Authority shall hold the Project Advance in a segregated account established in the custody of the Finance Authority, which account shall be referred to as the **Project Account**. Subject to the terms and conditions of this Agreement, the Finance Authority, upon the direction of the Owner, shall disburse amounts on deposit in the Project Account to the Owner or to such parties as may be named by the Owner in order to pay the costs of the Project. Each disbursement of any amount of the Project Advance under this Agreement shall constitute the Finance Authority's purchase of an equal principal amount of the OAQDA Bonds.

If the Project Advance is insufficient to pay the costs of the Project pursuant to this Agreement, the Owner, nevertheless, shall complete the acquisition, construction, equipping, installation, and improvement of the Project, and the Owner shall pay all such additional costs of the Project from its own funds. The Owner shall not be entitled to reimbursement for any such additional costs of the Project, nor shall it be entitled to any abatement, diminution, or postponement of the Special Assessments or an increase in the amount of the Special Assessments.

Section 4.2. Disbursements. In order to cause disbursement of amounts on deposit in the Project Account to pay or reimburse the costs of the Project, the Owner shall submit to the Finance Authority Disbursement Request Forms (a form of which is attached to this Agreement as **Exhibit C**), which Disbursement Request Forms each shall, in part, set forth the reimbursements or payments requested. The Finance Authority shall make disbursement only for cost of the Project incurred prior to the date of the Disbursement Request Form. Costs of the Project cannot be pre-funded. In addition, the following are conditions to disbursement of amounts on deposit in the Project Account:

(a) With each Disbursement Request Form:

(i) The Owner shall deliver to the Finance Authority a notarized AIA Application for Payment Form (G702);
(ii) The Owner shall deliver to the Finance Authority a notarized AIA Continuation Sheet (G703) with a budget for the Project, including a balance for each budget item, and how the disbursement being requested will be applied across the entire budget for the Project;
(iii) The Owner shall deliver to the Finance Authority copies of all related receipts and invoices;
(iv) The Owner shall deliver to the Finance Authority, as necessary, information detailing any other sources of funds spent to pay any portion of the costs shown on any related receipts and invoices such that all costs shown on related receipts and invoices, including costs not eligible to be paid from the Project Advance, shall be accounted for either as costs being paid by a disbursement of a portion of the Project Advance or costs being paid by other sources;
(v) The Owner shall deliver to the Finance Authority evidence of insurance coverage of all contractors and sub-contractors performing work at the Property with respect to the disbursement being requested;
(vi) The Owner shall deliver to the Finance Authority notarized partial lien waivers for the disbursement being requested;
(vii) The Owner shall deliver to the Finance Authority, as necessary, direction as to whom each amount requested shall be paid and bank information for wiring the amounts requested for disbursement.

(b) With the first Disbursement Request Form submitted, in addition to the documents required under Section 4.2(a):

(i) The Owner shall deliver to the Finance Authority copies of all construction permits required for the construction of the Project;
(ii) The Owner shall deliver to the Finance Authority copies of all agreements with all contractors and subcontractors performing work or furnishing materials for the Project;

(iii) The Owner shall deliver to the Finance Authority a construction schedule completed by the general contractor for the Project, which includes an anticipated date of completion of the Project; and

(iv) The Owner shall deliver to the Finance Authority copies of all current policies of the Required Insurance Coverage;

(v) The construction plans and specifications shall have been approved in all respects by the Finance Authority in its sole discretion;

(vi) The Owner shall deliver to the Finance Authority the written consent of its existing mortgage lender to the levying, assessment, and collection of the Special Assessments, in the form attached to this Agreement as **Exhibit F**;

(vii) The Finance Authority shall receive the executed Special Assessment Agreement and Owner Consent and evidence that the same has been recorded in the records of the County Recorder with respect to the Property;

(viii) The Owner and the ESID shall provide to the Finance Authority original executed copies of this Agreement and any related certificates.

(c) With the final Disbursement Request Form, in addition to the documents required under Section 4.2(a):

(i) The Owner shall deliver to the Finance Authority the executed certificate in the form attached as **Exhibit D** to this Agreement; and

(ii) The Owner shall deliver to the Finance Authority copies of all completion inspections and closed permits with respect to the Project.

Upon its receipt of each completed Disbursement Request Form, the Finance Authority shall approve all or a portion of the payment or reimbursements requested to be disbursed from the Project Account. To the extent the Finance Authority approves the payment or reimbursements requested to be disbursed from the Project Account, the Finance Authority shall pay the Owner or such other parties as are indicated on the Disbursement Request Form the amounts described on such Disbursement Request Form which have been approved by the Finance Authority.

Each disbursement of any amount of the Project Advance under this Agreement shall constitute the Finance Authority's purchase of an equal principal amount of the OAQDA Bonds.

Additionally, the Finance Authority shall disburse closing costs related to the financing described in this Agreement in an amount not to exceed $37,461.21, as detailed in **Exhibit E** to this Agreement to the parties set forth on **Exhibit E** to this Agreement. Without limiting the generality of the foregoing, disbursements made pursuant to this paragraph may be for fees to the Finance Authority, fees to the ESID, legal fees, advisory fees, fees to the City, and other closing costs or contingencies. The disbursement of closing costs under the previous sentences shall constitute the Finance Authority's purchase of an equal principal amount of the OAQDA Bonds

Section 4.3. Casualties and Takings. The Owner shall promptly notify the Finance Authority if the Project is damaged or destroyed by fire, casualty, injury or any other cause (each such occurrence, a **Casualty**). Upon the occurrence of such Casualty, the Owner's Lender, if any, may elect, in its sole discretion and judgment, to restore the Property and the Project or to terminate the construction of the Project, and in either case, to direct the application of the insurance proceeds pursuant to the terms of Owner's Lender's agreement with the Owner, provided that if the insurance proceeds are not used to restore the Property and the Project, insurance proceeds will be distributed first to Owner's Lender pursuant to its agreements with the Owner, and next to the Finance Authority for repayment of the outstanding balance of the Special Assessments and any related fees payable to the Finance Authority or the ESID under this Agreement, and any excess proceeds will be paid to the Owner.

Upon the occurrence of a Casualty, if no Person is a Lender at the time of such Casualty, the insurance proceeds shall be applied to pay the costs of the restoration of the Project or to the repayment of the outstanding balance of the Special Assessments, and in which case the Finance Authority shall remain obligated to make disbursements of up to the total amount of the Project Advance in accordance with this Agreement.

In the event restoration of the Project or the Property is pursued, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications. If, in the Finance Authority's reasonable judgment, said insurance proceeds are insufficient to complete the restoration, the Owner shall deposit with the Finance Authority such amounts as are necessary, in the Finance Authority's reasonable judgment, to complete the restoration in accordance with the plans and specifications.

In the event any part of the Property or the Project shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (a **Taking**), the Owner's Lender, if any, may elect, in its sole discretion and judgment, not to restore the Property or the Project or to restore the Property or the Project, and in either case, to direct the application of the proceeds of the Taking pursuant to the terms of its agreements with the Owner. If the Lender determines not to restore the Property or the Project and release funds related thereto to the Owner, the Finance Authority's obligation to make disbursements under this Agreement shall be terminated. If the Lender determines to restore the Property and the Project, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications. If, in the Finance Authority's reasonable judgment, the Taking proceeds available to the Owner and the Finance Authority are insufficient to complete the restoration, the Owner shall deposit with the Finance Authority such amounts as are necessary, in the Finance Authority's reasonable judgment, to complete the restoration in accordance with the plans and specifications.

In the event that no Person is a Lender at the time of such Taking, the Finance Authority's obligation to make disbursements under this Agreement shall be terminated unless the Property and the Project can be replaced and restored in a manner which will enable the Project to be functionally and economically utilized and occupied as originally intended. If the Property and the Project can be so restored, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications, and the Finance Authority shall release the funds for such purpose. If, in the Finance Authority's reasonable judgment, the Taking proceeds available to the Owner and the Finance Authority are insufficient to complete the restoration, the Owner shall deposit with the Finance Authority such amounts as are necessary, in the Finance Authority's reasonable judgment, to complete the restoration in accordance with the plans and specifications.

Section 4.4. Eligible Costs. The costs of the Project which are eligible for payment or reimbursement pursuant to this Agreement include the following:

(a) costs incurred directly or indirectly for or in connection with the acquisition, construction, equipping, installation, and improvement of the Project, including without limitation, costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, surveying, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work;

(b) financial, legal, recording, title, accounting, and printing and engraving fees, charges and expenses, and all other fees, charges and expenses incurred in connection with the financing described in this Agreement;

(c) premiums attributable to any surety and payment and performance bonds and insurance required to be taken out and maintained until the date on which each Project is final and complete;

(d) taxes, assessments and other governmental charges in respect of the Project that may become due and payable until the date on which each Project is final and complete;

(e) costs, including, without limitation, attorney's fees, incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project; and

(f) any other incidental or necessary costs, expenses, fees and charges properly chargeable to the cost of the acquisition, construction, equipment, installation, and improvement of the Project.

Section 4.5. Completion of Project; Inspection. The Owner (a) in accordance with the approved plans and specifications for the Project, which plans and specifications shall not be materially revised without the prior written approval of the Finance Authority, which approval shall not be unreasonably withheld, conditioned or delayed, shall acquire, construct, equip, install, and improve the Project with Project Advance with all commercially reasonable dispatch, (b) subject to its right to contest any disputed work, shall pay when due all fees, costs and expenses incurred or payable by the Owner in connection with that acquisition, construction, equipment, installation, and improvement from funds made available therefor in accordance with this Agreement or otherwise, and (c) shall ask, demand, sue for, levy, recover and receive all those sums of money, debts and other demands whatsoever which may be due, owing and payable to the Owner under the terms of any contract, order, receipt, writing or instruction in connection with the acquisition, construction, equipment, installation, and improvement of the Project, and shall utilize commercially reasonable efforts to enforce the provisions of any contract, agreement, obligation, bond or other performance security with respect thereto. It is understood that the Project is to be owned by the Owner and any contracts made by the Owner with respect to the Project or any work to be done by the Owner on or with respect to the Project are made or done by the Owner on its own behalf and not as agent or contractor for the ESID.

During the period of construction, acquisition, equipping, installation, and improvement of the Project, the ESID and the Finance Authority, and their respective agents, subject to reasonable security and safety regulations, and upon reasonable prior notice, shall have the right, during normal business hours, to inspect the Project. The ESID and the Finance Authority and their respective agents shall utilize commercially reasonable efforts to minimize interference with the tenants of the Property during any such inspection.

The Finance Authority reserves the right to deny the request for a Project Advance pursuant to Article IV of this Agreement if such inspection reveals that construction is not proceeding with reasonable dispatch. If, in the Finance Authority's opinion, after thirty (30) days' written notice to the Owner, the construction is not proceeding with reasonable dispatch, the Finance Authority may (i) request that the Owner remove and replace the general contractor with a general contractor acceptable to the Finance Authority, the failure of which by the Owner shall be a default under this Agreement, (ii) utilize funds to continue construction of the Project and such funds shall be considered Project Advances, or (iii) deny any Project Advance until such time as the construction resumes proceeding with reasonable dispatch.

The Owner shall notify the ESID, the City, and the Finance Authority of the Completion Date by a certificate in the form attached as **Exhibit D** to this Agreement, signed by the Owner stating: (a) the date on which the acquisition, construction, equipping, installation, and improvement of the Project was substantially completed by the general contractor for the Project in accordance with the construction contract, and the Owner has no unresolved complaints regarding the work; (b) that the Project has been completed in all material respects in accordance with the plans and specifications, permits, and budget for the Project approved by the Finance Authority; (c) that the Owner has complied, and will continue to comply with all applicable statutes, regulations, and ordinances in connection with the Property and the construction of the Project; (d) that the Owner holds fee ownership of the Property; (e) that the general contractor for the project has not offered the Owner any payment, refund, or any commission in return for completing Project; and (f) that all funds provided to the Owner by the Finance Authority for the Project have been used in accordance with this Agreement. The certificate shall be delivered as promptly as practicable after the Completion Date.

Section 4.6. Repayment. The Parties acknowledge that pursuant to this Agreement, the Project Advance is expected to be repaid by the Special Assessments. The Parties further acknowledge that the transfer of the Special Assessment from the City to the Finance Authority shall constitute Bond Service Payments on the OAQDA Bonds. The Parties agree that the Special Assessments have been levied and certified to the County Auditor in the amounts necessary to amortize the Project Advance, together with interest at the annual rate of 5.00%, and a $211.98 semi-annual administrative fee to the ESID over 36 semi-annual payments to be collected beginning approximately on January 31, 2020 and continuing through approximately July 31, 2037. The Parties further acknowledge that in addition to the amount of the Special Assessments and other related interest, fees, and penalties, the County Auditor may charge and collect a County Auditor collection fee on each annual installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Auditor pursuant to Ohio Revised Code Section 727.36. Interest shall accrue on the entire amount of the Project Advance from the date of this Agreement; provided, however, that a portion of the Project Advance may be used to pay interest accruing and due and payable on the Project Advance prior to the date on which the first installment of the Special Assessments is paid to the Finance Authority by the City. The Owner agrees to pay, as and when due, all Special Assessments with respect to its Property. Notwithstanding anything in this Section 4.6 or this Agreement to the contrary, the Parties acknowledge and agree that, pursuant to the laws of the State, the Special Assessments to be collected by the County Treasurer which as of the relevant date are not yet due and payable never shall be accelerated, and the lien of the Special Assessments never shall exceed the amount of Special Assessments which, as of the relevant date, are due and payable but remain unpaid.

Section 4.7. Prepayment. At any time after the date of this Agreement, the Owner may prepay any portion of the principal of the Project Advance to the Finance Authority by paying, in immediately available funds, 103% of the principal amount of the Project Advance to be prepaid, together with all accrued and unpaid interest on the Project Advance to the date of prepayment.

Immediately upon any prepayment pursuant to this Section 4.7, the Finance Authority shall notify the City of the prepayment, and the Owner, the Finance Authority, and the City shall cooperate to reduce the amount of Special Assessments to be collected by the County Auditor pursuant to Section 2.2(d) of this Agreement.

Section 4.8. Payment of Fees and Expenses. If an Event of Default on the part of the Owner should occur under this Agreement such that the ESID, the Finance Authority, or the City should incur expenses, including but not limited to attorneys' fees, in connection with the enforcement of this Agreement or the collection of sums due under this Agreement, the Owner shall reimburse the ESID, the Finance Authority, and the City, as applicable, for any reasonable out-of-pocket expenses so incurred upon demand. If any such expenses are not so reimbursed, the amount of such expenses, together with interest on such amount from the date of demand for payment at an annual rate equal to the lesser of 10% or the maximum rate allowable by law shall constitute indebtedness under this Agreement, and the ESID, the Finance Authority, and the City, as applicable, shall be entitled to seek the recovery of those expenses in such action except as limited by law or by judicial order or decision entered in such proceedings.

Section 4.9. Further Assurances. Upon the request of the Finance Authority, the Owner shall take any actions and execute any further documents as the Finance Authority reasonably deems necessary or appropriate to carry out the purposes of this Agreement.

ARTICLE V: EVENTS OF DEFAULT AND REMEDIES

Section 5.1. Events of Default. If any of the following shall occur, such occurrence shall be an **Event of Default** under this Agreement:

(a) The Owner shall fail to pay an installment of the Special Assessments when due, after taking into account all applicable extensions;

(b) The City shall fail to appropriate in any fiscal year the Special Assessments payable to the Finance Authority pursuant to this Agreement in such fiscal year, or shall fail to transfer, or cause the transfer of, any of the Special Assessments to the Finance Authority within the time specified in this Agreement;

(c) Any Party is in material breach of its representations or warranties under this Agreement; provided, however, that upon the material breach of a Party's representations or warranties under this Agreement, such Party shall have the right to cure such breach within 30 days of the receipt of written notice, and, if so cured, such breach shall not constitute an Event of Default; provided, however, that if the failure is other than the payment of money, and is of such nature that it can be corrected, but not within the applicable period, that failure shall not constitute an Event of Default so long as the ESID, an Owner, or the City, as applicable, institutes curative action within the applicable period and diligently pursues that action to completion;

(d) The ESID, the Owner, or the City, shall fail to observe and perform any other agreement, term, or condition contained in this Agreement, and the continuation of such failure for a period of 30 days after written notice of such failure shall have been given to the ESID, the Owner, or the City, as applicable, by any other Party to this Agreement, or for such longer period to which the notifying Party may agree in writing; provided, however, that if the failure is other than the payment of money, and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the ESID, an Owner, or the City, as applicable, institutes curative action within the applicable period and diligently pursues that action to completion;

(e) The Owner abandons its Property or the Project;

(f) The Owner commits material waste upon its Property or the Project;

(g) The Owner becomes bankrupt or insolvent or files or has filed against it (and such action is not stayed or dismissed within 90 days) a petition in bankruptcy or for reorganization or arrangement or other relief under the bankruptcy laws or any similar state law or makes a general assignment for the benefit of creditors; or

(h) Any workmanship or materials constituting a portion of the Project or incorporated into the Project shall be materially defective and shall not be corrected within 60 days after notice.

The declaration of an Event of Default above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

Promptly upon any non-defaulting Party becoming aware that an Event of Default has occurred, such Party shall deliver notice of such Event of Default to each other Party under this Agreement in accordance with the notice procedures described in Section 6.5 of this Agreement.

Section 5.2. Remedies on Default. Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

(a) The ESID, the Finance Authority, and the City, together or separately, may pursue all remedies now or later existing at law or in equity to collect all amounts due and to become due under this Agreement or to enforce the performance and observance of any other obligation or agreement of any of the Parties, as applicable, under this Agreement, including enforcement under Ohio Revised Code Chapter 2731 of duties resulting from an office, trust, or station upon the ESID or the City, provided that, Parties may only pursue such remedies against the Party responsible for the particular Event of Default in question; provided, however, that the ESID, the Finance Authority, and the City may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default.

(b) Any Party may pursue any other remedy which it may have, whether at law, in equity, or otherwise, provided that, Parties may only pursue such remedies against the Party responsible for the particular Event of Default in question; provided, however, that the ESID, the Finance Authority, and the City may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default.

Notwithstanding the foregoing, each of the ESID and the City shall not be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to it at no cost or expense.

Section 5.3. Foreclosure. Pursuant to Section 2.1 of the Special Assessment Agreement by and among the County Treasurer, the City, the ESID, the Finance Authority, and the Owner and dated as of the date of this Agreement (the **Special Assessment Agreement**), the County Treasurer has agreed not to confirm the sale of the Property for an amount less than 100% of the amount of the Special Assessments and other general real estate taxes, payments in lieu of taxes, and assessments then due and owing with respect to the Property, as shall be certified by the ESID to the County Treasurer pursuant to the records of the County Treasurer without the consent of the ESID and the Finance Authority. The ESID hereby agrees that in the event it is asked to provide its consent in accordance with Section 2.1, it will notify the Finance Authority of such request, and it will not provide its consent pursuant to Section 2.1 of the Special Assessment Agreement without the Finance Authority's prior written direction.

Section 5.4. No Remedy Exclusive. No remedy conferred upon or reserved to the Parties by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, or now or later existing at law, in equity or by statute; provided, however, that the ESID, the Finance Authority, and the City may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power nor shall be construed to be a waiver, 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 the Parties to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made in this Agreement.

Section 5.5. No Waiver. No failure by a Party to insist upon the strict performance by the other Parties of any provision of this Agreement shall constitute a waiver of such Party's right to strict performance; and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Parties to observe or comply with any provision of this Agreement.

Section 5.6. Notice of Default. Any Party to this Agreement shall notify every other Party to this Agreement immediately if it becomes aware of the occurrence of any Event of Default or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default.

ARTICLE VI: MISCELLANEOUS

Section 6.1. Owner Waivers. The Owner acknowledges that the process for the imposition of special assessments provides the owner of property subject to such special assessments with certain rights, including rights to: receive notices of proceedings; object to the imposition of the special assessments; claim damages; participate in hearings; take appeals from proceedings imposing special assessments; participate in and prosecute court proceedings, as well as other rights under law, including but not limited to those provided for or specified in the United States Constitution, the Ohio Constitution, Ohio Revised Code Chapter 727, the Charter of the City and the ordinances in effect in the City (collectively, **Assessment Rights**). The Owner irrevocably waives all Assessment Rights as to the Project and consents to the imposition of the Special Assessments as to the Project immediately or at such time as the ESID determines to be appropriate, and the Owner expressly requests the entities involved with the special assessment process to promptly proceed with the imposition of the Special Assessments upon its Property as to the Project. The Owner further waives in connection with the Project: any and all questions as to the constitutionality of the laws under which the Project will be constructed and the Special Assessments imposed upon the Property; the jurisdiction of the Council of the City acting thereunder; and the right to file a claim for damages as provided in Ohio Revised Code Section 727.18 and any similar provision of the Charter of the City or the ordinances in effect within the City.

Section 6.2. Term of Agreement. This Agreement shall be and remain in full force and effect from the date of execution and delivery until the payment in full of the entire aggregate amount of the Special Assessments shall have been made to the Finance Authority and the obligations (if any) of each Party under Section 6.4 shall have been fully satisfied, or such time as the Parties shall agree in writing to terminate this Agreement. Any attempted termination of this Agreement prior to the payment in full of the entire aggregate amount of the Special Assessments which is not in writing and signed by each of the Parties to this Agreement shall be null and void.

Section 6.3. Litigation Notice. Each Party shall give all other Parties prompt written notice of any action, suit, or proceeding by or against the notifying Party, at law or in equity, or before any governmental instrumentality or agency, of which the notifying Party has written notice and which, if adversely determined would impair materially the right or ability of the Parties to perform its obligations under this Agreement. The notifying Party's prompt notice shall be accompanied by its written statement setting forth the details of the action, suit, or proceeding and any responsive actions with respect to the action, suit, or proceeding taken or proposed to be taken by the Party.

Section 6.4. Indemnification. Except to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties (as defined below), the Owner shall indemnify and hold harmless the ESID, the Finance Authority, and the City (including any member, officer, director, or employee thereof) (collectively, the **Indemnified Parties**) against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses, but excluding consequential and punitive damages) imposed upon, incurred by or asserted against an Indemnified Party arising or resulting from (i) the levy and collection of the Special Assessments, (ii) Owner's financing, acquisition, construction, installation, operation, use or maintenance of the Project, (iii) any act, failure to act or misrepresentation solely by the Owner in connection with, or in the performance of any obligation on the Owner's part to be performed under this Agreement or related to the Special Assessments resulting in material actual damages, or (iv) (a) a past, present or future violation or alleged violation of any environmental laws in connection with the Property by any person or other source, whether related or unrelated to the Owner, (b) any presence of any hazardous, toxic or harmful substances, materials, wastes, pollutants or contaminants defined as such in or regulated under any environmental law (**Materials of Environmental Concern**) in, on, within, above, under, near, affecting or emanating from the Property, (c) the failure to timely perform any investigation, inspection, site monitoring, containment, clean–up, removal, response, corrective action, mitigation, restoration or other remedial work of any kind or nature because of, or in connection with, the current or future presence, suspected presence, Release (as defined below) or threatened Release in or about the air, soil, ground water, surface water or soil vapor at, on, about, under or within all or any portion of the Property of any Materials of Environmental Concern, including any action to comply with any applicable environmental laws or directives of any governmental authority with regard to any environmental laws, (d) any past, present or future activity by any person or other source, whether related or unrelated to the Owner in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Materials of Environmental Concern at any time located in, under, on, above or affecting the Property, (e) any past, present or future actual generation, treatment, use, storage, transportation, manufacture, refinement, handling, production, removal, remediation, disposal, presence or migration of Materials of Environmental Concern on, about, under or within all or any portion of the Property (a **Release**) (whether intentional or unintentional, direct or indirect, foreseeable or unforeseeable) to, from, on, within, in, under, near or affecting the Property by any person or other source, whether related or unrelated to the Owner, (f) the imposition, recording or filing or the threatened imposition, recording or filing of any lien on the Property with regard to, or as a result of, any Materials of Environmental Concern or pursuant to any environmental law, or (g) any misrepresentation or failure to perform any obligations related to environmental matters in any way pursuant to any documents related to the Special Assessments.

In the event any action or proceeding is brought against any Indemnified Party by reason of any such claim, such Indemnified Party will promptly give written notice thereof to the Owner. The Owner shall be entitled to participate at its own expense in the defense or, if it so elects, to assume at its own expense the defense of such claim, suit, action or proceeding, in which event such defense shall be conducted by counsel chosen by the Owner; but if the Owner shall elect not to assume such defense, it shall reimburse such Indemnified Party for the reasonable fees and expenses of any counsel retained by such Indemnified Party. Each Indemnified Party agrees that the Owner shall have the sole right to compromise, settle or conclude any claim, suit, action or proceeding against any of the Indemnified Parties. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ counsel in any such action at their own expense; and provided further that such Indemnified Party shall have the right to employ counsel in any such action and the fees and expenses of such counsel shall be at the expense of the Owner, if: (i) the employment of counsel by such Indemnified Party has been authorized by the Owner, (ii) there reasonably appears that there is a conflict of interest between the Owner and the Indemnified Party in the conduct of the defense of such action (in which case the Owner shall not have the right to direct the defense of such action on behalf of the Indemnified Party) or (iii) the Owner shall not in fact have employed counsel to assume the defense of such action. The Owner shall also indemnify the Indemnified Parties from and against all costs and expenses, including reasonable attorneys' fees, lawfully incurred in enforcing any obligations of the Owner under this Agreement. The obligations of the Owner under this Section shall survive the termination of this Agreement and shall be in addition to any other rights, including without limitation, rights to indemnity which any Indemnified Party may have at law, in equity, by contract or otherwise.

None of the Finance Authority, the City, or the ESID shall have any liability to the Owner or any other Person on account of (i) the Owner engaging a contractor from the list of contractors submitted by the ESID or the Finance Authority to the Owner, (ii) the services performed by the contractor, or (iii) any neglect or failure on the part of the contractor to perform or properly perform its services. None of the Finance Authority, the City, or the ESID assumes any obligation to the Owner or any other Person concerning contractors, the quality of construction of the Project or the absence of defects from the construction of the Project. The making of a Project Advance by the Finance Authority shall not constitute the Finance Authority's approval or acceptance of the construction theretofore completed. The Finance Authority's inspection and approval of the budget, the construction work, the improvements, or the workmanship and materials used in the improvements, shall impose no liability of any kind on the Finance Authority, the sole obligation of the Finance Authority as the result of such inspection and approval being to make the Project Advances if, and to the extent, required by this Agreement. Any disbursement made by the Finance Authority without the Finance Authority having received each of the items to which it is entitled under this Agreement shall not constitute breach or modification of this Agreement, nor shall any written amendment to this Agreement be required as a result.

Section 6.5. Notices. All notices, certificates, requests or other communications under this Agreement shall be in writing and shall be delivered personally or mailed by registered or certified mail, postage prepaid, return receipt requested, or by nationally recognized overnight courier, and addressed to the appropriate Notice Address. The Parties, by notice given under this Agreement to the others, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent. Each of the Parties agree to provide the other Parties to this Agreement of any litigation of which it has actual knowledge that may adversely affect its ability to carry out its obligations under this Agreement. All notices shall be deemed given upon the earlier of actual receipt; three days after mailing by certified mail; or one business day after sending by nationally recognized overnight courier.

Section 6.6. Extent of Covenants; No Personal Liability. All covenants, obligations, and agreements of the ESID and the City contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No covenant, obligation, indemnity or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent, or employee of the ESID, the Board, the Owner, the City, the City Council, the Finance Authority, or the Board of Directors of the Finance Authority in other than his or her official capacity; and none of the members of the Board, the City Council, or the Board of Directors of the Finance Authority, nor any official of the ESID, the Owner, the City, or the Finance Authority executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the covenants, obligations, indemnities or agreements of the ESID, the Owner, the City, or the Finance Authority contained in this Agreement.

Section 6.7. Binding Effect; Assignment; Estoppel Certificates. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Parties. Except as specifically provided below, this Agreement shall not be assigned by the any of the Parties except as may be necessary to enforce or secure payment of the Special Assessments.

Notwithstanding anything in this Agreement to the contrary, the Owner freely may sell the Property and the Project or any portion of the Property and the Project from time to time and may assign this Agreement to an arms-length, good faith purchaser of the Property but only after notice of such assignment is given to the Finance Authority, and only upon (i) the execution and delivery to the City, the Finance Authority, and the ESID of an "Assignment and Assumption of Energy Project Cooperative Agreement" in the form attached to and incorporated into this Agreement as **Exhibit G**; and (ii) the execution and delivery to the Finance Authority of an assignment of all construction contracts for the Project. The Parties acknowledge and agree that the Assignment and Assumption of Energy Project Cooperative Agreement includes the assignment and assumption of the Special Assessment Agreement, and the Owner Consent. Following any assignment by the Owner as described above, all obligations of the Owner contained in this Agreement, the Special Assessment Agreement, the Owner Consent, and all other applicable Project Documents shall be obligations of the assignee, and the assigning Owner shall be released of its obligations and liabilities arising under this Agreement and under the Project Documents as set forth in this Agreement.

Notwithstanding anything in this Agreement to the contrary, the Finance Authority shall have the unrestricted right at any time or from time to time, and without the Owner's consent, to assign all or any portion of its rights and obligations under this Agreement, and may sell or assign any and all liens received directly or indirectly from the City to any Person (each, a **Finance Authority Assignee**), and the Owner agrees that it shall execute, or cause to be executed, such documents, including without limitation, amendments to this Agreement and to any other documents, instruments and agreements executed in connection with this Agreement as the Finance Authority shall reasonably deem necessary to effect the foregoing so long as such amendment does not materially adversely impact the Owner's rights and obligations under this Agreement. Any Finance Authority Assignee shall be a party to this Agreement and shall have all of the rights and obligations of the Finance Authority under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to the extent that such rights and obligations have been assigned by the Finance Authority pursuant to the assignment documentation between the Finance Authority and such Finance Authority Assignee, and the Finance Authority shall be released from its obligations under this Agreement and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement to a corresponding extent. If, at any time, the Finance Authority assigns any of the rights and obligations of the Finance Authority under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to a Finance Authority Assignee, the Finance Authority shall give prompt notice of such assignment to the other Parties. At the same time as and with any assignment of this Agreement or the Finance Authority's right to receive the Special Assessments under this Agreement by the Finance Authority as described above, the Finance Authority also shall assign all of its rights, title, and interest in and to, and all of its obligations under the Pledge Agreement dated as of [____], 2018 between the Finance Authority and OAQDA to the Finance Authority Assignee to whom this Agreement or the right to receive the Special Assessments under this Agreement has been assigned.

In addition, the Finance Authority shall have the unrestricted right at any time and from time to time, and without the consent of or notice of the Owner, to grant to one or more Persons (each, a **Participant**) participating interests in Finance Authority's obligation to make Project Advances under this Agreement or to any or all of the loans held by Finance Authority under this Agreement. In the event of any such grant by the Finance Authority of a participating interest to a Participant, whether or not upon notice to the Owner, the Finance Authority shall remain responsible for the performance of its obligations under this Agreement, and the Owner shall continue to deal solely and directly with the Finance Authority in connection with the Finance Authority's rights and obligations under this Agreement. The Owner agrees that the Finance Authority may furnish any information concerning the Owner in its possession from time to time to prospective Finance Authority Assignees and Participants.

This Agreement may be enforced only by the Parties, their permitted assignees, and others, who may, by law, stand in their respective places.

Any Party shall at any time and from time to time, upon not less than 30 days' prior written notice by the other party, execute, acknowledge and deliver to such party a statement in writing certifying that: (i) this Agreement is unmodified and in full force and effect (or, if there has been any modification of this Agreement, that the same is in full force and effect as modified and stating the modification or modifications); (ii) to the best of such Party's actual knowledge (without any duty of inquiry) there are no continuing Events of Default (or, if there is a continuing Event of

Default, stating the nature and extent of such Event of Default); (iii) that, to the best of such Party's actual knowledge (without any duty of inquiry) there are no outstanding damages or liability arising from an Event of Default (or, if there is any outstanding damages or liability, stating the nature and extent of such damages or liability); (iv) if such certificate is being delivered by the Owner, the dates to which the Special Assessments have been paid; and (v) if such certificate is being delivered by the Finance Authority, the dates to which the Special Assessments have been paid to the Finance Authority. It is expressly understood and agreed that any such certificate delivered pursuant to this Section 6.7 may be relied upon by any prospective assignee of the Owner or any prospective Finance Authority Assignee.

Section 6.8. Amendments and Supplements. Except as otherwise expressly provided in this Agreement, this Agreement may not be amended, changed, modified, altered or terminated except by unanimous written agreement signed by each of the Parties materially affected by such proposed amendment, change, modification, alteration, or termination. For purposes of this Section, a materially affected Party is a Party with respect to which a material right or obligation under this Agreement is proposed to be amended, changed, modified, altered, or terminated. Any attempt to amend, change, modify, alter, or terminate this Agreement except by unanimous written agreement signed by all of the materially affected Parties or as otherwise provided in this Agreement shall be void.

Section 6.9. Execution Counterparts. This Agreement may be executed in counterpart and in any number of counterparts, each of which shall be regarded as an original and all of which together shall constitute but one and the same instrument.

Section 6.10. Severability. If any provision of this Agreement, or any covenant, obligation, or agreement contained in this Agreement is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation, or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained in this Agreement. That invalidity or unenforceability shall not affect any valid and enforceable application of the provision, covenant, obligation, or agreement, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the full extent permitted by law.

Section 6.11. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the Parties have each caused this Agreement to be duly executed in their respective names, all as of the date first written above.

BEXLEY, COLUMBUS, DUBLIN, GROVE CITY, HILLIARD, PERRY TOWNSHIP, WHITEHALL, WORTHINGTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:

COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., as the ESID

By: ________________________________

Name: ______________________________

Title: _______________________________

HENDERSON PARTNERS, LLC, as the Owner

By: ___________________________________

Name: _________________________________

Title: __________________________________

COLUMBUS-FRANKLIN COUNTY FINANCE AUTHORITY, as the Finance Authority

By: ___________________________________

Name: _________________________________

Title: __________________________________

CITY OF COLUMBUS, OHIO, as the City

By: ___________________________________

Name: _________________________________

Title: _________________________________

CITY FISCAL OFFICER CERTIFICATE

The undersigned, Director of Finance of the City of Columbus, Ohio, hereby certifies that the moneys required to meet the obligations of the City during the year 2018 under the foregoing Energy Project Cooperative Agreement ($0.00) have been lawfully appropriated by the City Council of the City of Dublin, Ohio for such purpose and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

____
Director of Finance
City of Columbus, Ohio

Dated: _____________, 2018

EXHIBIT A

DEFINITIONS

As used in this Agreement, the following words have the following meanings:

"*Agreement*" means this Energy Project Cooperative Agreement, dated as of [______], 2018, by and between the ESID, the Owner, the Finance Authority, and the City, as the same may be amended, modified, or supplemented from time to time in accordance with its terms.

"*Board*" means the Board of Directors of the ESID.

"*Bond Purchase Agreement*" means the Bond Purchase Agreement between the Finance Authority, the Owner, and the OAQDA, dated as of [_______________], as the same may be amended, modified, or supplemented from time to time in accordance with its terms, under which the Finance Authority has agreed to purchase the OAQDA Bonds to provide financing for the costs of the Project.

"*Bond Service Payments*" means the principal of, and interest and any premium on, the OAQDA Bonds.

"*City*" means the City of Columbus, Ohio.

"*City Council*" means the City Council of the City.

"*Completion Date*" means the latest date on which substantial completion of the Project, in accordance with the Plans occurs, which date shall be established by the Completion Certificate attached to this Agreement as **Exhibit D**.

"*County*" means Franklin County, Ohio.

"*County Auditor*" means the Auditor of the County.

"*County Prosecutor*" means the Prosecuting Attorney of the County.

"*County Treasurer*" means the Treasurer of the County.

"*Disbursement Request Form*" means the form attached to this Agreement as **Exhibit C**, which form shall be submitted by the Owner in order to receive disbursements from the Project Account.

"*ESID*" means the Bexley, Columbus, Dublin, Grove City, Hilliard, Perry Township, Whitehall, Worthington Regional Energy Special Improvement District, Inc., doing business under the registered trade name Columbus Regional Energy Special Improvement District, Inc., a nonprofit corporation and energy special improvement district organized under the laws of the State of Ohio.

"*Finance Authority*" means the Columbus-Franklin County Finance Authority, a port authority and body corporate and politic duly organized and validly existing under the laws of the State of Ohio, together with any Finance Authority Assignee.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Lender" means any Person which has loaned money to the Owner to pay or refinance the costs of acquiring, financing, refinancing, or improving the Property and which loan is secured by a mortgage interest in the Property, or any permitted successors or assigns of such Person.

"*Notice Address*" means:

(a)	As to the City:	City of Columbus, Ohio 90 West Broad St. Columbus, Ohio 43215 Attention: City Manager
(b)	As to the ESID:	Columbus Regional Energy Special Improvement District, Inc. c/o MORPC 111 Liberty Street, Suite 100 Columbus, Ohio 43215 Attention: Christina O'Keeffe
	With a Copy To:	J. Caleb Bell, Esq. Bricker & Eckler LLP 100 S. Third Street Columbus, Ohio 43215
(c)	As to the Owner	Henderson Partners, LLC c/o Newman Knight & Frank 35 N. Fourth St., Suite 510 Columbus, Ohio 43215
	With a Copy To:	Dickinson Wright PLLC 150 E. Gay Street, Suite 2400 Columbus, Ohio 43215 Attention: Harlan W. Robins, Esq.
(d)	As to the Finance Authority	Columbus-Franklin County Finance Authority 350 E. First Avenue, Suite 120

Columbus, Ohio 43201
Attention: President

"*OAQDA*" means the Ohio Air Quality Development Authority.

"*OAQDA Bonds*" means bonds issued by the OAQDA and purchased by the Finance Authority under the Bond Purchase Agreement.

"*Ordinance Levying Assessments*" means any resolution or ordinance passed, enacted, or adopted by the City pursuant to Ohio Revised Code Section 727.25 with respect to levying special assessments on real property within the ESID.

"*Ordinance to Proceed*" means any resolution or ordinance passed, enacted, or adopted by the City pursuant to Ohio Revised Code Section 727.23 with respect to levying special assessments on real property within the ESID.

"*Owner*" means Henderson Partners, LLC, an Ohio limited liability company, and any permitted successors or assigns.

"*Owner Consent*" means the Owner Consent dated [___________], 2018 by Henderson Partners, LLC and recorded in the records of the Franklin County Recorder with respect to the Property.

"*Parties*" means the ESID, the Owner, the Finance Authority, and the City.

"*Party*" means, individually, any one of the Parties.

"*Person*" or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or governmental bodies, political subdivisions, other legal entities, and natural persons.

"*Plan*" means the Columbus Regional Energy Special Improvement District Program Plan adopted by the City of Columbus, Ohio by its Resolution No. 0261X-2015 of November 23, 2015, and any and all supplemental plans approved by the ESID and the City, including, without limitation, the Supplemental Plan.

"*Project*" means the special energy improvement project described in the Supplemental Plan with respect to the Property, for which Special Assessments are to be levied by the City, all in accordance with the Supplemental Plan.

"*Project Account*" means the segregated account in the custody of the Finance Authority for the benefit of the Owner which contains the Project Advance, and out of which disbursements may be made in accordance with Article IV of this Agreement.

"*Project Advance*" means the amount of immediately available funds to be transferred, set over, and paid to and held in the Project Account established pursuant to Section 4.1 of this Agreement for the benefit of the Owner.

"*Property*" means the real property subject to the Plan.

"*Repayment Schedule*" means the schedule attached to and incorporated into this Agreement as **<u>Exhibit B</u>**, which schedule establishes the dates and amounts for the repayment of the Project Advance by the Special Assessments paid by the Owner.

"Required Insurance Coverage" means, collectively, the Required Property Insurance Coverage and the Required Public Liability Insurance Coverage, each of which, in addition to the requirements described in their respective definitions, (i) must provide for 10 days' notice to the Finance Authority in the event of cancellation or nonrenewal and (ii) must name as an additional insured (mortgagee/loss payee) the Finance Authority.

"Required Property Insurance Coverage" means at any time insurance coverage evidenced maintained with generally recognized, responsible insurance companies qualified to do business in the State in the amount of the then full replacement value of the Project and Property, insuring the Project against loss or damage by fire, windstorm, tornado and hail and extended coverage risks on a comprehensive all risk/special form insurance policy and containing loss deductible provisions of not to exceed $10,000, which insurance coverage shall name the Finance Authority as loss payee/mortgagee.

"Required Public Liability Insurance Coverage" means at any time commercial general liability insurance against claims for personal injury, death or property damage suffered by others upon, in or about any premises occupied by the Owner, which insurance coverage shall name the Finance Authority as an additional insured.

"*Resolution of Necessity*" means any resolution or ordinance passed, enacted, or adopted by the City pursuant to Ohio Revised Code Section 727.12 with respect to levying special assessments on real property within the ESID.

"*Special Assessment Act*" means, collectively, Ohio Revised Code Section 727.01 *et seq.*, Ohio Revised Code Section 1710.01 *et seq.*, Ohio Revised Code Section 323.01 *et seq.*, Ohio Revised Code Section 319.01 *et seq.*, Ohio Revised Code Section 5721.01 *et seq.*, and related laws.

"*Special Assessment Proceedings*" means, collectively, Resolution No. [___]-2018 of the City Council adopted on [_____], 2018 approving the Petition, the Plan, and the Supplemental Plan and declaring the necessity of the Project adopted on [______], 2018, Ordinance No. [___]-2018, determining to proceed with the Project, adopted on [______], 2018, and Ordinance [___]-2018, levying the Special Assessments, adopted on [_______], 2018, with respect to levying special assessments on the Property subject to the Petition.

"*Special Assessments*" means the special assessments levied pursuant to the Special Assessment Act and the Special Assessment Proceedings by the City with respect to the Project, a schedule of which is attached to- and incorporated into the Plan.

"*State*" means the State of Ohio.

"*Supplemental Plan*" means the Supplement to Plan for 4400 North High Street, Columbus, Ohio Project, approved by the City Council on [_____], 2018 by its Resolution No. [___]-2018.

EXHIBIT B

REPAYMENT SCHEDULE

Borrower Payment Date	Payment to Lender on	Principal	Interest 5.00%	Accrued Interest	Trustee Fee	ESID Admin Fee	Semiannual Assessment	Outstanding Balance
	10/12/18							$ 940,647.21
	11/15/18	$ -	$ 4,311.30	$ (4,311.30)	$ -	$ -	$ -	944,958.51
	05/15/19	-	23,623.96	(23,623.96)	-	-	-	968,582.47
	11/15/19	-	24,214.56	(24,214.56)	-	-	-	992,797.03
01/31/20	05/15/20	17,325.87	24,819.93	-	250.00	211.98	42,607.78	975,471.15
07/31/20	11/15/20	17,759.02	24,386.78	-	250.00	211.98	42,607.78	957,712.13
01/31/21	05/15/21	18,203.00	23,942.80	-	250.00	211.98	42,607.78	939,509.14
07/31/21	11/15/21	18,658.07	23,487.73	-	250.00	211.98	42,607.78	920,851.06
01/31/22	05/15/22	19,124.52	23,021.28	-	250.00	211.98	42,607.78	901,726.54
07/31/22	11/15/22	19,602.64	22,543.16	-	250.00	211.98	42,607.78	882,123.91
01/31/23	05/15/23	20,092.70	22,053.10	-	250.00	211.98	42,607.78	862,031.21
07/31/23	11/15/23	20,595.02	21,550.78	-	250.00	211.98	42,607.78	841,436.19
01/31/24	05/15/24	21,109.89	21,035.90	-	250.00	211.98	42,607.78	820,326.29
07/31/24	11/15/24	21,637.64	20,508.16	-	250.00	211.98	42,607.78	798,688.65
01/31/25	05/15/25	22,178.58	19,967.22	-	250.00	211.98	42,607.78	776,510.07
07/31/25	11/15/25	22,733.05	19,412.75	-	250.00	211.98	42,607.78	753,777.02
01/31/26	05/15/26	23,301.37	18,844.43	-	250.00	211.98	42,607.78	730,475.65
07/31/26	11/15/26	23,883.91	18,261.89	-	250.00	211.98	42,607.78	706,591.74
01/31/27	05/15/27	24,481.01	17,664.79	-	250.00	211.98	42,607.78	682,110.73
07/31/27	11/15/27	25,093.03	17,052.77	-	250.00	211.98	42,607.78	657,017.70
01/31/28	05/15/28	25,720.36	16,425.44	-	250.00	211.98	42,607.78	631,297.35
07/31/28	11/15/28	26,363.37	15,782.43	-	250.00	211.98	42,607.78	604,933.98
01/31/29	05/15/29	27,022.45	15,123.35	-	250.00	211.98	42,607.78	577,911.53
07/31/29	11/15/29	27,698.01	14,447.79	-	250.00	211.98	42,607.78	550,213.52
01/31/30	05/15/30	28,390.46	13,755.34	-	250.00	211.98	42,607.78	521,823.06
07/31/30	11/15/30	29,100.22	13,045.58	-	250.00	211.98	42,607.78	492,722.84
01/31/31	05/15/31	29,827.73	12,318.07	-	250.00	211.98	42,607.78	462,895.11
07/31/31	11/15/31	30,573.42	11,572.38	-	250.00	211.98	42,607.78	432,321.69
01/31/32	05/15/32	31,337.76	10,808.04	-	250.00	211.98	42,607.78	400,983.93
07/31/32	11/15/32	32,121.20	10,024.60	-	250.00	211.98	42,607.78	368,862.73
01/31/33	05/15/33	32,924.23	9,221.57	-	250.00	211.98	42,607.78	335,938.50
07/31/33	11/15/33	33,747.34	8,398.46	-	250.00	211.98	42,607.78	302,191.16
01/31/34	05/15/34	34,591.02	7,554.78	-	250.00	211.98	42,607.78	267,600.14
07/31/34	11/15/34	35,455.80	6,690.00	-	250.00	211.98	42,607.78	232,144.34
01/31/35	05/15/35	36,342.19	5,803.61	-	250.00	211.98	42,607.78	195,802.15
07/31/35	11/15/35	37,250.75	4,895.05	-	250.00	211.98	42,607.78	158,551.41
01/31/36	05/15/36	38,182.01	3,963.79	-	250.00	211.98	42,607.78	120,369.40
07/31/36	11/15/36	39,136.56	3,009.23	-	250.00	211.98	42,607.78	81,232.83
01/31/37	05/15/37	40,114.98	2,030.82	-	250.00	211.98	42,607.78	41,117.85
07/31/37	11/15/37	41,117.85	1,027.95	-	250.00	211.98	42,607.78	0.00
Totals		**$ 992,797.02**	**$ 576,601.57**	**$ (52,149.82)**	**$ 9,000.00**	**$ 7,631.28**	**$ 1,533,880.05**	

EXHIBIT C

DISBURSEMENT REQUEST FORM

STATEMENT NO. [___] REQUESTING AND AUTHORIZING DISBURSEMENT OF FUNDS PURSUANT TO SECTION 4.2 OF THE ENERGY PROJECT COOPERATIVE AGREEMENT DATED AS OF [_____], 2018.

Amount Requested: $_________________

Pursuant to Section 4.2 of the Energy Project Cooperative Agreement dated as of [______], 2018 (the **Agreement**) among the ESID, the Owner, and the Finance Authority, the undersigned authorized representative of Henderson Partners, LLC, as the Owner under the Agreement, hereby requests the Finance Authority having custody of the Project Account, to pay to the Owner or the other person(s) listed on the disbursement schedule attached hereto as Appendix I (the **Disbursement Schedule**), the respective amounts specified in the Disbursement Schedule out of the moneys on deposit in the Project Account for the advances, payments and expenditures made in connection with the costs of the Project described in the Disbursement Schedule, all in accordance with Section 4.2 of the Agreement (capitalized words and terms not otherwise defined herein having the meanings assigned to them in the Agreement).

In connection with this request and authorization (the **Disbursement Request**), the undersigned hereby certifies that:

(i) each of the representations and warranties made by the Owner in the Agreement remains true and correct, in all material respects, as of the date of this Disbursement Request and no Event of Default by the Owner under the Agreement exists;

(ii) each item for which disbursement is requested by this Disbursement Request is properly payable out of the Project Account in accordance with the terms and conditions of the Agreement and, except as otherwise noted, none of those items has formed the basis for any disbursement heretofore made from the Project Account;

(iii) to the extent any portion of the payment requested is for construction work, the Owner has received and herewith delivers to the Finance Authority, conditional waivers of any mechanics' or other liens with respect to such work;

(iv) this Disbursement Request and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Finance Authority for its actions taken pursuant hereto; and

(v) this Disbursement Request constitutes the approval of the Owner of each disbursement hereby requested and authorized.

Dated: ________________________ ______________________________________

Authorized Representative of
Owner

Approved in accordance with the Agreement:

Columbus-Franklin County Finance Authority,
as the Finance Authority:

By:__________________________________

Name:________________________________

Title:_________________________________

Dated: _______________________________

SCHEDULE 1 TO DISBURSEMENT REQUEST FORM

Payee	Amount	Purpose

EXHIBIT D

FORM OF COMPLETION CERTIFICATE

Henderson Partners, LLC (the **Owner**) hereby certifies that the Project, as such term is defined in the Energy Project Cooperative Agreement entered into by and between the Owner, the Columbus Regional Energy Special Improvement District, Inc., the City of Columbus, Ohio and the Columbus-Franklin County Finance Authority (the **Finance Authority**) dated as of [______], 2018 (the **Agreement**) has been completed at 4400 North High Street, Columbus, Ohio (the **Property**) in strict compliance with the requirements of the Agreement.

Note: Capitalized terms used but not defined in this Completion Certificate have the meaning assigned to them in the Agreement to which a form of this Completion Certificate is attached and of which it forms a part.

THE OWNER HEREBY CERTIFIES:

(a) That the acquisition, construction, equipping, installation, and improvement of the Project was substantially completed on ________________________;

(b) That all other facilities necessary in connection with the Project have been acquired or are otherwise available to the Owner;

(c) That the acquisition, construction, equipping, installation, and improvement of the Project and those other facilities have been accomplished in such a manner as to conform with all applicable zoning, planning, building, environmental, and other similar governmental regulations;

(d) That except as provided in clause (e) below, all costs of that acquisition, construction, equipping, installation, and improving then or theretofore due and payable have been paid; and

(e) The amounts, if any, the Finance Authority shall retain in the Project Account for the payment of costs not yet due or for liabilities that the Owner is contesting or which otherwise should be retained and the reasons such amounts should be retained.

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NOTICE: DO NOT SIGN THIS COMPLETION CERTIFICATE UNLESS YOU AGREE TO EACH OF THE ABOVE STATEMENTS.

Henderson Partners, LLC, as the Owner

By: ______________________________

Name: ______________________________

Title: ______________________________

EXHIBIT E

CLOSING COSTS DETAIL

Pursuant to Section 4.2 of the foregoing Energy Project Cooperative Agreement, the Finance Authority shall disburse to the respective payee set forth below, the following closing costs:

PAYEE	AMOUNT	REASON
Bricker & Eckler LLP	$15,000.00	Lender and ESID Counsel Fee
DiPerna Advisors	7,500.00	Financial Advisor Fee
Columbus-Franklin County Finance Authority	7,500.00	Finance Authority Fee
Columbus Regional Energy Special Improvement District, Inc.	2,257.97	ESID Fee
Ohio Air Quality Development Authority	4,703.24	OAQDA Fee
The Huntington National Bank, as disbursing agent	500.00	Disbursing Agent Fee
TOTAL	**$37,461.21**	

EXHIBIT F
CONSENT OF MORTGAGEE

[See Attached]

EXHIBIT G

FORM OF ASSIGNMENT AND ASSUMPTION OF ENERGY PROJECT COOPERATIVE AGREEMENT

ASSIGNMENT AND ASSUMPTION
OF
ENERGY PROJECT COOPERATIVE AGREEMENT

[________________________] (**Assignor**), in consideration of the sum of $[___________] in hand paid and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Assignor's execution of this Assignment and Assumption of Energy Project Cooperative Agreement (**Assignment**), assigns, transfers, sets over, and conveys to [________________________] (**Assignee**) all of Assignor's right, title, and interest in and to that certain Energy Project Cooperative Agreement dated as of [_______], 2018 between the Bexley, Columbus, Dublin, Grove City, Hilliard, Perry Township, Whitehall, Worthington Regional Energy Special Improvement District, Inc., d/b/a Columbus Regional Energy Special Improvement District, Inc., Assignor, the Columbus-Franklin County Finance Authority (the **Finance Authority**), and the City of Dublin, Ohio (the **City**) (the **Energy Project Cooperative Agreement**).

By executing this Assignment, Assignee accepts the assignment of, and assumes all of Assignor's duties and obligations under, the Energy Project Cooperative Agreement. Assignee further represents and warrants that it has taken title to the "Property," as that term is defined in the Energy Project Cooperative Agreement, subject to the Special Assessment Agreement dated as of even date with the Energy Project Cooperative Agreement between the Franklin County Treasurer, the City, the ESID, the Finance Authority, and Henderson Partners, LLC (the **Special Assessment Agreement**) and to the "Owner Consent" dated [_________], 2018 by Henderson Partners, LLC and recorded in the records of the Franklin County Recorder with respect to the Property. By executing this Assignment, Assignee accepts the assignment of, and assumes all of Assignor's duties and obligations under, the Special Assessment Agreement and the Owner Consent.

Assignor and Assignee acknowledge and agree that executed copies of this Assignment shall be delivered to the City, the Finance Authority, and the ESID, as each of those terms are defined in the Energy Project Cooperative Agreement, all in accordance with Sections 3.4(a) and 6.7 of the Energy Project Cooperative Agreement

In witness of their intent to be bound by this Assignment, each of Assignor and Assignee have executed this Assignment this _____________ day of _______________, [_____], which Assignment is effective this date. This Assignment may be executed in any number of counterparts, which when taken together shall be deemed one agreement.

[Signature Pages Follow]

ASSIGNOR:

[________________________________]

By: ________________________________

Name: ________________________________

Title: ________________________________

ASSIGNEE:

[______________________________]

By: ______________________________

Name: ______________________________

Title: ______________________________

EXHIBIT H

FEDERAL LAW PROVISIONS SUMMARY

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 ("Recovery Act" or "ARRA") was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use loan funds in a manner that maximizes job creation and economic benefit.

Contracting Party shall cause each Energy Loan Loss Reserve Project Beneficiary comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as set forth below.

None of the funds provided under this Agreement derived from the Recovery Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

1. *Timely and Accurate Reporting. Contracting Party shall cause each Energy Loan Loss Reserve Project Beneficiary to comply with all reporting requirements outlined in Section 1512 of ARRA and such additional reporting guidance as may be issued from time to time. Each Energy Loan Loss Reserve Project Beneficiary's reporting must be sufficient to support the requirements of the Contracting Party to make timely and accurate reports to the federal agency from which the Contracting Party receives ARRA funds. Each Contracting Party's reports to the federal agency are due no later than ten (10) calendar days after each calendar year in which Contracting Party receives assistance funded in whole or in part by ARRA funds. Contracting Party's annual reporting requirements include the amount of ARRA funds received; the amount of ARRA funds expended or obligated; detailed list of all projects or activities for which the ARRA funds were expended; an estimate of the number of jobs created and the number of jobs retained by the project or activity; and detailed information concerning subcontracts or sub-loans including the state Ohio. Information from such reports will be made available to the public.*

a. *Separate Tracking and Reporting. Section 1512 of ARRA mandates special reporting for expenditure of ARRA funds. ARRA funds may be used in conjunction with funds from other sources, including federal funds not provided under the authority of ARRA and State funds, to complete the Project, but tracking and reporting of ARRA funds must be separate from tracking and reporting of other funds used for the Project. The Contracting Party cause each Energy Loan Loss Reserve Project Beneficiary to ensure that the loan of ARRA funds is established and maintained in its accounting system to accommodate tracking and reporting of ARRA funds separate from other revenue streams.*

b. *<u>Separate Accounts for ARRA Funds</u>. Contracting Party shall deposit and maintain funds provided under the authority of ARRA in separate accounts. No part of the ARRA funds shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for ARRA projects.*

c. *<u>Identification of ARRA Funds with "ARRA-" Prefix</u>. If Contracting Party is subject to the requirements of the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," Contracting Party shall separately identify the expenditures of funds provided under the authority of ARRA on the Schedule of Expenditures of Federal Awards ("SEFA") and, if required, the Data Collection Form (SF-SAC). The separate identification shall be accomplished by identifying expenditures of ARRA funds separately on the SEFA and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number and by including the prefix "ARRA-" in identifying the name of the federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.*

d. *<u>Central Contractor Registration</u>. During the term of this Agreement, Contracting Party shall maintain a current registration in the Central Contractor Registration (www.ccr.gov). A Dun and Bradstreet Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.*

e. *<u>State of Ohio Reporting Form</u>. Each Energy Loan Loss Reserve Project Beneficiary shall complete and provide to Contracting Party the "OBM, Ohio Energy Loan Loss Reserve Project Beneficiary and Sub-Recipient Spending Report in Compliance with ARRA Sec. 1512." The State of Ohio must report information described in Section 1512 of ARRA using the reporting instructions and data elements that are provided online at <u>www.FederalReporting.gov</u> and ensure that any information that is pre-filled is corrected or updated as needed. Accordingly, each Energy Loan Loss Reserve Project Beneficiary shall provide to Contracting Party as promptly as possible and within the time required for the State to comply with reporting requirements any information needed by the State to complete the online reporting.*

f. *<u>Monthly Reporting</u>. The Energy Loan Loss Reserve Project Beneficiary shall report its performance and spending under the Agreement monthly as provided in the Agreement notwithstanding that the Contracting Party will report quarterly to federal agencies. In order to comply with reporting deadlines to which the Contracting Party may be subject, the Contracting Party reserves the right to accelerate the deadline for reports required from each Energy Loan Loss Reserve Project Beneficiary.*

g. *<u>Jobs Created and Retained</u>. The Contracting Party shall cause each Energy Loan Loss Reserve Project Beneficiary to report the number of jobs created and retained directly by each Energy Loan Loss Reserve Project Beneficiary and by each of its contractors as a result of the ARRA funding provided pursuant to this Agreement as well as an estimate of jobs created or retained elsewhere as a result of ARRA* *funding.*

(1) ‘‘Jobs or positions created’’ means those new positions created and filled, or previously existing unfilled positions that are filled, as a result of ARRA funding. ‘‘Jobs or positions retained’’ means those previously existing filled positions that are retained as a result of ARRA funding. This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work.

(2) For purposes of estimating the number of jobs created and jobs retained in the United States and outlying areas, at a minimum, the estimate shall include any new positions created and any existing filled positions that were retained to support or carry out ARRA projects or activities managed directly by the recipient, and if known, by subrecipients. The number shall be expressed as ‘‘full-time equivalent’’ (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the recipient. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

(3) A job cannot be reported both as created and retained.

(4) Additional guidance will be provided for reporting jobs created and retained.

a. *Additional or Modified Reporting Requirements. The Contracting Party may, from time to time as it deems appropriate and necessary, communicate specific instructions and requests to each Energy Loan Loss Reserve Project Beneficiary concerning any additional reporting requirements related to the ARRA funds received under this Agreement.*

b. *Information in Support of ARRA Reporting. Contracting Party may be required to submit back-up documentation for expenditures of ARRA funds, including such items as timecards and invoices. Each Energy Loan Loss Reserve Project Beneficiary shall provide copies of back-up documentation at the request of Contracting Party or USDOE Contracting Officer or designee.*

2. Accessibility to Records and Project Sites.

a. *Comptroller General of the United States Authority to Inspect. Pursuant to Section 902 of ARRA, the Comptroller General of the United States and his representatives have the authority to:*

(1) Examine any records of the Contracting Party, each Energy Loan Loss Reserve Project Beneficiary and any contractor and subcontractors of the Contracting Party or Energy Loan Loss Reserve Project Beneficiary that directly pertain to, and involve transactions relating to, the contract or subcontract, or of any State or local agency administering such contract; and

(2) Interview any officer or employee of the Contracting Party, each Energy Loan Loss Reserve Project Beneficiary or any of its contractors or

subcontractors, or of any State or local government agency administering the contract, regarding such transactions; and

(3) Designate a time and place to examine those records and interview those officers and employees described above.

b. *Inspector General Authority to Inspect. Pursuant to Section 1515(a) of ARRA, an Inspector General or any representative of an Inspector General has the authority to:*

(1) Examine any records of the Contracting Party, each Energy Loan Loss Reserve Project Beneficiary, and any contractor and subcontractors of the Contracting Party or Energy Loan Loss Reserve Project Beneficiary that directly pertain to, and involve transactions relating to, the contract or subcontract, or of any State or local agency administering such contract; and

(2) Interview any officer or employee of the Contracting Party, each Energy Loan Loss Reserve Project Beneficiary, or any of its contractors or subcontractors, or of any State or local government agency administering the contract, regarding such transactions; and

(3) Designate a time and place to examine those records and interview those officers and employees described above.

c. *Duty to Incorporate in Contracts. To facilitate access to records and personnel by the Comptroller General and/or an Inspector General as described in paragraphs (a) and (b), the Contracting Party shall cause each Energy Loan Loss Reserve Project Beneficiary to include verbatim in any agreement with a contractor, and shall cause each of its contractors to include verbatim in any agreement with a subcontractor, from which the Energy Loan Loss Reserve Project Beneficiary or a contractor acquires any goods or services for the Project the language set forth in paragraphs (a) and (b) of this Section 2.*

3. Equal Employment Opportunities.

a. *Compliance with Federal Laws. In addition to the Contracting Party's equal employment opportunity requirements set forth in the Agreement, the Contracting Party shall cause each Energy Loan Loss Reserve Project Beneficiary to comply, and each Energy Loan Loss Reserve Project Beneficiary shall obtain the agreement of each of its contractors and any subcontractors to comply, with all of the following federal laws pertaining to civil rights and anti-discrimination:*

Title VI & Title VII of Civil Rights Act of 1964
Equal Pay Act of 1962
Age Discrimination in Employment Act of 1967
Title IX of Educational Amendments of 1972
Section 504 of the Rehabilitation Act of 1973
Age Discrimination Act of 1975

Title I & Title V of Americans with Disabilities Act of 1990
Fair Housing Act
Fair Credit Reporting Act
Equal Educational Opportunities Act
Uniform Relocation Act

Failure by the Contracting Party and each Energy Loan Loss Reserve Project Beneficiary to comply with these laws shall constitute a breach of a material obligation of the Contracting Party and may result in termination of the Agreement.

b. *Implementation Plan for Small and Disadvantaged Businesses. Each Energy Loan Loss Reserve Project Beneficiary shall provide the Contracting Party an implementation plan for training and hiring minority and disadvantaged workers. Each Energy Loan Loss Reserve Project Beneficiary shall also demonstrate to the Contracting Party that when contactors are being hired by the Energy Loan Loss Reserve Project Beneficiary, if applicable, small disadvantaged business enterprises are offered opportunities to bid on and receive contracted work on the Project. Information about the Energy Loan Loss Reserve Project Beneficiary's outreach to small and disadvantaged business enterprises shall be provided to the Contracting Party when contracts are presented for review and approval in accordance with Section 1 of this Appendix.*

4. Job Postings. The Contracting Party shall post all jobs created by the Energy Loan Loss Reserve Project Beneficiary resulting from the award of the contract and the use of ARRA funds on www.ohiomeansjobs.com. The Contracting Party shall also cause each Energy Loan Loss Reserve Project Beneficiary to require each of its contractors to post all jobs created by the contractor resulting from the award of this contract and the use of ARRA funds on www.ohiomeansjobs.com. "Jobs created" are those positions created and filled or previously existing unfilled positions that are retained as a result of ARRA funding.

5. Protections for Individuals Reporting Compliance Issues (Whistleblower Protection).

a. *Prohibition on Reprisals: Pursuant to Section 1553 of ARRA, the Contracting Party, each Energy Loan Loss Reserve Project Beneficiary, and each of its contractors and any subcontractors are prohibited from discharging, demoting, or otherwise discriminating against any employee of the Contracting Party, contractor or subcontractor, as a reprisal for disclosing information that the employee reasonably believes is evidence of:*

(1) gross mismanagement of the contract relating to funds for the Project;

(2) gross waste of ARRA funds;

(3) substantial and specific danger to public health or safety related to the implementation or use of ARRA funds;

(4) an abuse of authority related to the implementation of or use of ARRA funds; or

(5) a violation of law, rule, or regulation related to the contract (including the competition for or negotiation of the contract) relating to ARRA funds.

b. *Agency Action: ARRA authorizes an appropriate inspector general to receive and investigate all complaints alleging a violation as described in paragraph (a) of this section. Not later than 30 days after receiving an inspector general report of an alleged reprisal, the federal agency loaning funds for this Agreement is required to make a determination about whether an employee has been subjected to a prohibited reprisal. The federal agency must either issue an order denying relief in whole or in part or take one or more of the following actions:*

(1) order the employer to take affirmative action to abate the reprisal;

(2) order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back page, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken;

(3) order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

c. *Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by ARRA Section 1553 may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of the circumstances for which employees are protected by Section 1553.*

d. *Requirement to Post Notice of Rights and Remedies: All employers receiving ARRA funds, including the Contracting Party, each Energy Loan Loss Reserve Project Beneficiary, its contractors and any subcontractors, shall post notice of employee rights as described above in conspicuous locations with other required employee rights information.*

6. <u>False Claims Act</u>. Contracting Party shall promptly refer to the USDOE Inspector General or any other appropriate inspector general any credible evidence that a principal, employee, agent, contractor, Contracting Party, Energy Loan Loss Reserve Project Beneficiary subcontractor or other person has submitted a false claim under the False Claim Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving any Loan Funds.

7. <u>Availability of Funds</u>. Funds appropriated under ARRA and obligated to this award are available for reimbursement of costs pursuant to the SEP-ARRA program.

Publication. *Information about this Agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the federal Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code (the Freedom of Information Act).*