



CITY OF FAIRVIEW PARK

20777 Lorain Road
Fairview Park, Ohio 44126-2018
- Established in 1910 -

Patrick J. Cooney, Mayor

AGENDA PUBLIC HEARING

Monday, August 17, 2020
5:30 p.m.

Zoom Telephone/Video Conference & Live Streamed on City's YouTube Channel

Meeting Dial-In# (Audio Only): (646) 558-8656 or (301) 715- 8592
Join Video Meeting: <https://zoom.us/j/95996818942?pwd=aGdwUGIPWW1EODV3bDZ6OU5VTTdhQT09>
Meeting ID: 959 9681 8942 | Password: 980176 (For Audio and Video)
YouTube Channel: https://www.youtube.com/channel/UC207O_m7DfOP_FcDvoDR5oq

1. GRANT PROGRAM
2. FUNDING REQUEST
3. PROJECT IMPACT
4. TIMELINE
5. Q & A



**SFY 2021 Enhanced Mobility for Seniors and Individuals
with Disabilities (Section 5310) Program – Public Hearing**
August 17, 2020



1. GRANT PROGRAM

2. FUNDING REQUEST

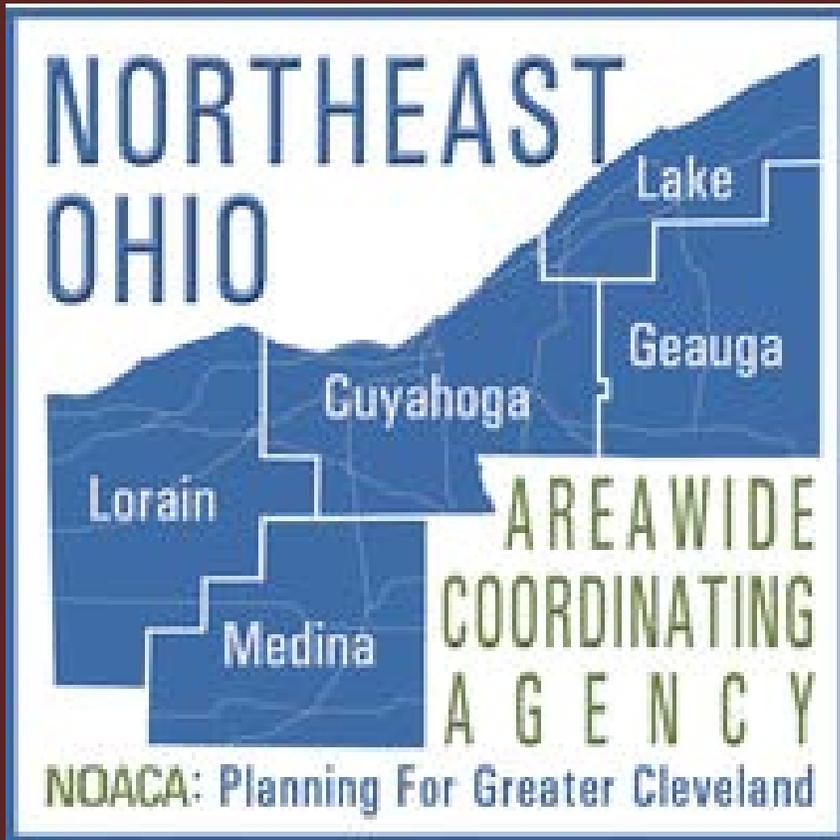
3. PROJECT IMPACT

4. TIMELINE

5. Q & A

OVERVIEW





The Section 5310 Program is administered by the Northeast Ohio Areawide Coordinating Agency (NOACA), and provides federal funding for capital projects to assist public transit agencies, municipalities, private non-profits, and for profit companies to provide coordinated transportation services to meet the needs of seniors and individuals with disabilities.

GRANT PROGRAM



This program focuses on projects:

- Planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable;
- That improve access to fixed-route service and decrease reliance on complementary paratransit services; and
- That provide alternatives to public transportation services that assist seniors and individuals with disabilities with their transportation needs.

GRANT PROGRAM



The City of Fairview Park is submitting an application for funding to purchase a 2021 Chevrolet Malibu for the Senior Transportation Program fleet.

The proposed sedan will be outfitted with leather seating, all-weather mats, and a protective barrier between the driver's seat and back passenger seats.

FUNDING REQUEST



The estimated project cost is \$19,500, of which the City is requesting \$15,600 in grant funding and providing a local match not to exceed \$3,900, or 20% of the total cost. The required local match will be paid from the Permanent Improvement Fund (Fund 260) or Senior Life Donation Fund (Fund 761)

FUNDING REQUEST



Purchase of the proposed sedan will:

- Enable the Senior Life Department to increase its level of service and continue providing safe and convenient transportation services to the City's senior citizens.
- Enable the City to provide single-rider trips to senior citizens, which will help reduce exposure to COVID-19 and other illnesses, while still enabling seniors to be transported to medical appointments, pharmacies, and other essential destinations.
- Allow for fast and thorough cleaning and sanitizing before and after each trip, as the vehicle will be equipped with leather seats, all-weather mats, and a protective barrier.

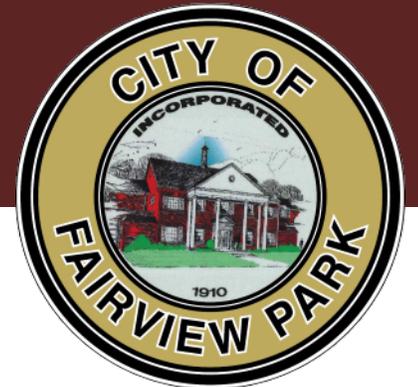
PROJECT IMPACT



Purchase of the proposed sedan will:

- Expand upon and diversify the City's Senior Transportation Program, as it's current fleet does not contain a sedan.
- Reduce greenhouse gas emissions and fuel usage, as single-rider trips will be provided with a sedan rather than the City's existing buses or van, which require more fuel and emit more carbon dioxide. A reduction in fuel usage will result in cost savings.

PROJECT IMPACT



August 7, 2020 - Section 5310 application deadline

September 4, 2020 – Deadline for submission of supportive legislation to NOACA

December 11, 2020 - NOACA Board of Directors approval of Section 5310 funding recommendations

Spring 2021 – Contract execution/Begin Procurement Process

TIMELINE





Q & A



THANK YOU!

Please contact Laura Brondos for questions or comments regarding the Senior Life Transportation Program, and Monica Jordan for questions or comments related to the City's Section 5310 grant proposal.

Laura Brondos

Interim Senior Life Director

(440) 356-4436

Laura.Brondos@fairviewpark.org

Monica Jordan

Community Development Planner

(440) 356-4499

Monica.Jordan@fairviewpark.org

CONTACT INFORMATION





CITY OF FAIRVIEW PARK

20777 Lorain Road
Fairview Park, Ohio 44126-2018
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Patrick J. Cooney, Mayor

AGENDA BOARD OF CONTROL

Monday, August 17, 2020
6:00 p.m.

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- A. Call to Order
- B. Roll Call
- C. Old Business (Approve May 11 Meeting Minutes)
- D. New Business
 - 1. BWC GRANT FUNDED SAFETY EQUIPMENT PURCHASE
 - Kundel Production Safety Systems – Approved in Grant
 - Materials approved in grant: trench box, tools and equipment for trench and personnel
 - Best and most responsive quote
 - \$11,208.93 in grant funds – City's matching requirement \$2,802.23
 - Total purchase \$14,011.16
 - 2. RENTAL FOR AERIAL TRUCK USE IN SERVICE DEPARTMENT
 - Custom Truck / One Source
 - 2018 Freightliner Forestry truck with 70' and bucket
 - \$4,250/ month and \$8,500 for two-month rental (City requests 2-month rental)
 - 3. CONSTRUCTION RESOURCES
 - Technical Assistance to make necessary improvements to adapt to COVID-19 protocol (regarding doors / entry – exits).
 - \$5,800 for consulting (guidance for purchasing / installation)
 - 4. Vance's Law Enforcement
 - Purchases ammunition, sling2, sights and adapters for minimizing flash and noise
 - \$7,211.72

Update on HVAC – TBA at next Board of Control Meeting

 - Request for Board of Control Meeting September 8th

E. Adjournment



**Bureau of Workers'
Compensation**

13430 Yarmouth Drive
Pickerington, OH 43147

Governor **Mike DeWine**
Administrator/CEO **Stephanie McCloud**

www.bwc.ohio.gov
1-800-644-6292
Fax: 1-866-336-8352

July 13, 2020

Monica Rossiter
City of Fairview Park
20777 Lorain Rd
Fairview Park, Ohio 44126

Policy number: 31806202
Application number: 08-0216

Dear Monica Rossiter:

Congratulations! We have approved City of Fairview Park's application for the Trench Safety Grant (TSG) project requesting \$11,208.93. You may now make your purchase. Your obligation of the total project of \$14,011.16 is \$2,802.23. The following equipment is approved under this grant award as detailed in the attached approved grant budget:

- 4 Trench Jack Rails, 4 Panels, 2 Pump Buckets 2 Fluids, 2 Release Tools, 2 Removal Hooks, 1 Trench Box, 1 Spreader, 1 Spreader Adjuster, 1 Sling.

You should receive your award within six weeks from the date of this letter. If you enrolled in electronic funds transfer (EFT), expect a direct deposit into the account specified on your vendor information form.

You must complete the action steps as listed below:

- ◇ **Within 90 days** of the receipt of this approval letter, purchase the approved intervention equipment/services.
- ◇ **Within 120 days** of the receipt of this approval letter, submit proof of spending and purchase documentation for all approved equipment/services.
- ◇ **Within 120 days** of the receipt of this approval letter, complete and submit **Appendix A – Training Log** and **Appendix B – Competent Person Evaluation Form**.

Please review details on the attached *Employer Action Steps* sheet.

We stand ready to assist you with your safety needs. If you would like to speak with a Division of Safety & Hygiene consultant or have questions about the TSG program, please call 1-800-644-6292, and listen to the options.

Sincerely,

Bernard J. Silkowski
Superintendent, Division of Safety & Hygiene

Enclosure

cc: BWC Finance Division
File

Employer Action Steps

Steps	Action steps	Date completed
1	Purchase the approved intervention. Your deadline to <u>purchase the intervention</u> is within 90 days of the date of the approval letter.	
2	<p>Within 120 days after the date of the approval letter, you must provide BWC with the following:</p> <ul style="list-style-type: none"> ◇ Proof of Spending - Submit final itemized invoice(s) pertaining to all approved equipment/services purchased. ◇ Proof of Payment - Submit either of the following for all invoices associated with the grant (including BWC and employer matching contributions): <ul style="list-style-type: none"> ○ A copy of the front and back of your canceled check(s) with a clearly visible deposit stamp, or ○ An unaltered* bank or credit card statement containing: <ul style="list-style-type: none"> ▪ Bank's name and address. ▪ Your company's name, address, and account number/ACH ID. ▪ Transaction details (including the date, name of recipient, and amount paid). ◇ Completed Appendix A – Training Log ◇ Completed Appendix B – Competent Person Evaluation. <p><i>* You may redact the account balance, amount due, and account number (up to the last four digits).</i></p> <p>Submit the required documentation to dshsg@bwc.state.oh.us or forward the documentation to BWC Safety Grants Program, 13430 Yarmouth Drive, Pickerington, Ohio 43147-8310 c/o Safety Grants program coordinator.</p> <p>IRS 1099 requirement – All grant recipients will be issued a 1099 for their BWC paid grant funds. This does not preclude employers from providing us proof of spending verification for the use of the grant funds within 120 days of the date of the approval letter.</p> <p>Note: The issuance of a 1099 does not preclude us from seeking administrative, civil and/or criminal sanctions if you do not reimburse us all unused grant money and/or funds deemed misappropriated.</p>	

(Note: Employers who fail to adhere to the regulations, terms and/or conditions of the TSG program may be required to reimburse us, up to the full amount of the grant, and may face civil and/or criminal sanctions.)



APPROVED

Section V: Budget

Step 1: Please provide the proposed budget for the project.

Table with 4 columns: Item, Quantity, Cost, Total. Lists items like Trench Jack, Euro Panel, Manual Pump Bucket, etc.

Subtotal \$ 16,465.56

Freight \$ 0.00

Tax \$ 0.00

Employers must list all discounts and/or trade-in amounts, and subtract them from the project total prior to determining the grant match. You must include discounts on the vendor price quote. - 2,454.40

Total budget \$ 14,011.16

To determine the grant amount you are requesting for equipment, please complete the formula below.

Total amount of project (from table above) A \$ 14,011.16

Total amount supplied by BWC, (either \$12,000 or less, or remaining funds available) B \$ 11,208.93

Total amount supplied by the employer for equipment (A x 4) / 5 = B (multiply A by 4, then divide by 5) A-B \$ 2,802.23

Step 2: Please provide the proposed budget for the project.

Do you have ownership, partnership, or any other affiliation with the vendor of the equipment you are purchasing?

If yes, please explain NO

Are you planning to finance your portion of the grant project? Yes No If yes, you must provide us with a copy of the loan agreement with your receipt documentation once you receive the grants funds and make your purchase.

Authority - The person signing below for the employer states that he or she is either the owner, chief executive officer, chief financial officer, plant manager, or other person having fiduciary responsibilities with the employer; and the employer agrees that the signer, or his or her successor, will have the authority to oversee the carrying out the employer's responsibilities for two years after BWC issues the grant check.

By my signature, I agree to comply fully with the terms and conditions of this agreement and to use all monies solely for the purposes intended. I further understand I may be subject to civil, criminal, and/or administrative penalties as the result of any false, fictitious, and/or misleading or fraudulent statements made and/or if funds are not used, or are misused, misapplied, or misappropriated in any way and/or are used for purchases and/or services not associated with the approved budget and/or itemized proposal submitted.

Name of duly authorized representative (please print): Mary Kay Costello

Signature of duly authorized representative: [Handwritten Signature]

Title: Director of Public Service + Development Date: 10/31/2020

Employer name: City of Fairview Park BWC policy: 31806202

Quote Estimate



APPROVED

Customer Address

Kevin Bridegum
 (440)356-4409
 City of Fairview Park
 20777 Lorain Road
 Fairview Park Ohio 44126
 United States

Shipping Address

City of Fairview Park
 20777 Lorain Road
 Fairview Park Ohio 44126

Kundel Industries, Inc.
 1510 Ridge Road
 Vienna OH 44473
 USA

p: 330.259.9009
 f: 330.259.9001
 Email: sales@kundel.com
 www.kundel.com

Quote No: T-20000334

Date: 1/29/2020

Salesperson: Jerry Shaughnessy

Valid For: 7 Days

Description: Quote for Kevin Bridegum (City of Fairview Park)

Qty	Part No.	Item Description	Unit	Unit Price	Total
4	TJ-3456-05.0-HD-ST-K	Trench Jack 34 in-56 in-5ft Rail HD Weight: 73	each	1,497.78	5,991.12
				- 15 % DISCOUNT @	5,092.45
4	SKU7051	4 X 8 Euro Panel set of 2ea (Unit Wt. 220 lbs) Weight: 220	each	469.47	1,877.88
				- 15 % DISCOUNT @	1,596.20
2	563700	MANUAL PUMP BUCKET STANDARD/ USA STEEL (Unit Wt. 35 lbs) Weight: 35	each	1,268.16	2,536.32
				- 15 % DISCOUNT @	2,155.87
2	06GL-AS-FLUID	T/S FLUID ALL SEASON - 6 gallon (Unit Wt. 54 lbs) Weight: 54	each	206.41	412.82
				- 15 % DISCOUNT @	350.90
2	563650	RELEASE TOOL - 30 IN	each	111.81	223.62
				- 15 % DISCOUNT @	190.08
2	SKU7065	REMOVAL HOOK 30 in (Unit Wt. 3 lbs) Weight: 3	each	94.83	189.66
				- 15 % DISCOUNT @	161.21

List Sub Total \$11,231.42
 Total Discount \$1684.71
 Grand Total \$9,546.71
 Currency USD
 No. Line Items 6

Please sign below to accept this Quote Estimate and to acknowledge that you have read and agree to Kundel's Terms & Conditions.
 Please return this signed document by email or fax. Thank you!

Signature _____

Date _____

Printed Name _____

Your PO # _____

Quote Estimate



APPROVED

Customer Address

Kevin Bridegum
 (440)356-4409
 City of Fairview Park
 20777 Lorain Road
 Fairview Park Ohio 44126
 United States

Shipping Address

City of Fairview Park
 20777 Lorain Road
 Fairview Park Ohio 44126

Kundel Industries, Inc.
 1510 Ridge Road
 Vienna OH 44473
 USA

p: 330.259.9009
 f: 330.259.9001
 Email: sales@kundel.com
 www.kundel.com

Quote No: T-20000331 Date: 1/29/2020 Salesperson: Jerry Shaughnessy Valid For: 7 Days
 Description: Quote for Kevin Bridegum (City of Fairview Park)

Qty	Part No.	Item Description	Unit	Unit Price	Total
1	B3-6X8-K	Basic 3 - 6 X 8 Knife	Side Wall Set	4,003.61	4,003.61
		Depth A Soil: 58	- 15 % DISCOUNT @		3,403.07
		Depth B Soil: 32			
		Depth C Soil: 24			
		Spreader Type: 0			
		Primaray Use: 0			
		Weight: 1222			
		Excavator Weight Rsnge: 631			
		Features and Benefits: 0			
1	A-2030	Set of 4 3STD Spreaders 30 Inches Long	Set	307.95	307.95
		Weight: 72	- 15 % DISCOUNT @		261.76
1	A-ADJ-2	Set of 4 3STD Spreader Adjusters	Set	614.02	614.02
			- 15 % DISCOUNT @		521.92
1	QOS-EN-30-5-LTCHS	4 Leg 5' Polyester Sling 5200@30 7400@45 9000@6	Set	308.56	308.56
		Weight: 20	- 10 % DISCOUNT @		277.70

List Sub Total \$5,234.14
 Total Discount \$769.69
 Grand Total \$4,464.45
 Currency USD
 No. Line Items 4

Please sign below to accept this Quote Estimate and to acknowledge that you have read and agree to Kundel's Terms & Conditions.
 Please return this signed document by email or fax. Thank you!

Signature _____ Date _____

Printed Name _____ Your PO # _____



CITY OF FAIRVIEW PARK

20777 Lorain Road
Fairview Park, Ohio 44126-2018
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Patrick J. Cooney, Mayor

BOARD OF CONTROL MINUTES May 11, 2020

Members Present: Mayor Patrick J. Cooney, Councilman William Minek, Public Service and Development Director Mary Kay Costello, Finance Director Gregory Cingle, Law Director Tim Riley.

Mayor Cooney called the Board of Control meeting to order at 6:01 p.m. (Meeting was conducted by electric platform with agenda and platform address posted on the City website.)

There was no Old Business to discuss.

Mayor Cooney called for discussion of a New Business item regarding a request by Mary Kay Costello, Director of Public Service and Development, to award the construction contract for the West 213 Water Main Replacement and Pavement Resurfacing project.

Mrs. Costello stated that six bids were received on May 1, 2020 and the lowest and most responsive was from Fabrizi Trucking and Paving for \$569,170.25 which was \$73,329.75 below the engineer's estimate and \$59,701.64 less than the next lowest bid (from DiGioia Suburban Excavating for \$628,871.89).

Mrs. Costello recommended awarding the contract to Fabrizi Trucking and Paving Co., Inc. in an amount not to exceed \$569,170.25 for the replacement of the water main and resurfacing project for West 213th which Fairview Park City Council authorized the Board of Control to award in an amount not to exceed \$659,000 under Ordinance 19-56. The award of the bid to Fabrizi Trucking and Paving, Co., Inc. for \$569,170.25 includes contingency for water line and paving items. The memo from consulting City Engineer Michael Mackay was referenced.

It was also discussed that due to the proximity to the Fairview Park High School and Middle School, this project must be completed within 105 days from the Notice to Proceed. Being able to complete a Notice to Proceed this week will result in substantial completion of the project by mid-August and pose the least amount of conflicts with the start of school as possible.

The anticipated portion of the project cost for the City (of the total \$569,170.25) is \$249,799.25 and the Cleveland Division of Water portion is \$319,371.00.

There were no questions posed.

Mr. Cingle made a motion to award the West 213 Water Main Replacement and Pavement Resurfacing Project construction contract to Fabrizi Trucking and Paving Co., Inc. in an amount not to exceed \$569,170.25. Mr. Riley seconded the motion. Mayor Cooney called for voice vote. All were in favor and none were opposed (5-0). There were no abstentions.

There being no other business Mayor Cooney adjourned the meeting at 6:07 p.m.

Signature: _____

Name: Patrick Cooney, Mayor



CITY OF FAIRVIEW PARK
CITY COUNCIL MEETING
AGENDA

MONDAY, AUGUST 17, 2020
SPECIAL COMMITTEE MEETING
SPECIAL COUNCIL MEETING

via Zoom Telephone/Video Conference & Live Streamed on City's YouTube Channel

Meeting Dial-In# (Audio Only): (646) 558-8656 or (301) 715-8592
Join Video Meeting: <https://zoom.us/j/95996818942?pwd=aGdwUGIPWW1EODV3bDZ6OU5VTTdhQT09>
Meeting ID: 959 9681 8942 | Password: 980176 (For Audio and Video)
YouTube Channel: https://www.youtube.com/channel/UC207O_m7DfOP_FcDvoDR5og

PLEASE NOTE THAT THERE WILL BE A PUBLIC HEARING (5:30pm) AND BOARD OF CONTROL (6:00 pm) MEETING PRIOR TO THE SPECIAL COUNCIL MEETINGS VIA THE SAME ZOOM MEETING LINK

6:30 p.m. – SPECIAL COMMITTEE MEETING/COUNCIL CAUCUS

MEETING CALLED TO ORDER

FINANCE – Councilwoman King, Chair | Councilwoman Adler, Vice Chair

- Ord. 20-__ Authorizing Application to NOACA for Senior Transportation Grant
- Ord. 20-__ Authorizing Purchases with P&P Valley View Holdings, LLC
- Res. 20-__ PACE 1_Form of Resolution of Necessity for Public Improvements for Brookpark Rd Projects
- Ord. 20-__ PACE 2_Ordinance to Proceed with Improvements for Brookpark Rd Projects
- Ord. 20-__ PACE 3_Ordinance Levying Assessments for Public Improvements for Brookpark Rd Projects
- Ord. 20-__ Restructuring Personnel Composition of Police Department

BOARDS & COMMISSIONS REPORTS

ROUNDTABLE

7:00 p.m. - SPECIAL COUNCIL MEETING

Meeting Called to Order | Moment of Silent Prayer

Pledge of Allegiance

Roll Call

Written Communications, Petitions and Claims (must be related to the subject (s) to be considered)

Continued on next page →

Legislation on for First Reading

COUNCILWOMAN KING

Ord. 20-__ Authorizing Purchases with P&P Valley View Holdings, LLC

Res. 20-__ PACE 1_Form of Resolution of Necessity for Public Improvements for Brookpark Rd Projects

Ord. 20-__ PACE 2_Ordinance to Proceed with Improvements for Brookpark Rd Projects

Ord. 20-__ PACE 3_Ordinance Levying Assessments for Public Improvements for Brookpark Rd Projects

Ord. 20-__ Restructuring Personnel Composition of Police Department

Audience Input on Legislation Up For Passage

Legislation on for Passage Without Three Readings

COUNCILWOMAN KING

Ord. 20-__ Authorizing Application to NOACA for Senior Transportation Grant

Executive Session

Adjournment

****Pursuant to Fairview Park Charter Article 4, Section 7(b) and Council Rule 5, no other subject(s) will be considered**

CITY OF FAIRVIEW PARK
ORDINANCE NO. 20-
REQUESTED BY: MARY KAY COSTELLO
SPONSORED BY: COUNCILWOMAN KING

AN ORDINANCE AUTHORIZING THE MAYOR TO PURCHASE NECESSARY DEBRIS DISPOSAL SERVICES AND ROAD REPAIR MATERIALS FROM BOYAS EXCAVATING AND BOYAS AGGREGATES AND MATERIALS NKA P & P VALLEY VIEW HOLDINGS, LLC AND DECLARING AN EMERGENCY

WHEREAS, the City of Fairview Park is required to properly dispose of debris accumulated from street projects, storm cleanup and other miscellaneous city projects; and

WHEREAS, the City of Fairview Park purchases road repair material and top soil and mulch in order to complete necessary repairs and projects; and

WHEREAS, Boyas Excavating nka P & P Valley View Holdings, LLC, is the closest and most cost effective contractor to provide said disposal services; and

WHEREAS, Boyas Aggregates and Materials nka P & P Valley View Holdings, LLC is a supplier that the City of Fairview Park occasionally uses to purchase road repair materials and topsoil and mulch; and

WHEREAS, the Mayor has performed legal services for some of the owners of P & P Valley View Holdings, LLC, dba Boyas Excavating and Boyas Aggregates and Materials in his capacity as a private attorney; and

WHEREAS, the Mayor has also performed legal services for Pete & Pete Container Services, Inc., which is an affiliate of P & P Valley View Holdings, LLC, in his capacity as a private attorney; and

WHEREAS, in order to remove the appearance of any impropriety, the Mayor requests Council to allow the Mayor to approve invoices from Boyas Excavating and/or Boyas Aggregates and Materials nka P & P Valley View Holdings, LLC, in an amount not to exceed a combined total of \$15,000 per year; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FAIRVIEW PARK, COUNTY OF CUYAHOGA AND STATE OF OHIO:

SECTION 1. The Mayor is hereby authorized to approve invoices from Boyas Excavating and Boyas Aggregates and Materials nka P & P Valley View Holdings, LLC, in an amount not to exceed a total of \$15,000 per year on a continual basis to be paid through the General Fund;

SECTION 2. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare and provided it receives the affirmative vote of a majority plus one of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise from and after the earliest period allowed by law.

PASSED:
APPROVED:

1st reading:
2nd reading:
3rd reading:

Michael P. Kilbane, President of Council

Patrick J. Cooney, Mayor

Liz L. Westbrooks, Clerk of Council



MEMORANDUM

TO: Fairview Park City Council

FROM: Mary Kay Costello, Director of Public Service and
Development

DATE: August 11, 2020

RE: P & P Valley View Holdings, LLC

Attached is legislation authorizing Mayor Patrick J. Cooney to sign invoices for P & P Valley View Holdings, LLC dba Boyas Excavating and Boyas Aggregates and Materials (collectively referred to as "Boyas"). Boyas Excavating provides disposal services for debris accumulated from street projects, storm clean-up and other City projects. Boyas Aggregates and Materials supplies aggregate material (i.e. stone, topsoil, and mulch) used for street repairs and other municipal projects.

This authorization is requested as the Mayor, in his capacity as a private attorney, has performed legal services for

Sue and Pete Ristagno, two of the principals of P & P Valley View Holdings, LLC. The Mayor has also performed legal services for Pete & Pete Container Services, Inc., an affiliate of P & P Valley View Holdings, LLC. The Ristagno family purchased the assets of Boyas in 2019 and Sue and Pete Ristagno are also principals of Pete & Pete.

It is my understanding the City has been using the services of Boyas for about 25 years. Copies of printouts for the purchases made by the City from Boyas Excavating from 2015-2020 and Boyas Aggregates and Materials from 2015-2020 are attached. The City is seeking to continue doing business with Boyas as it is the least costly and most efficient alternative available to the City especially with regard to the disposal of road material. Boyas, which is located in Valley View, currently charges the City \$12.50 per cubic foot and the loads are usually about 15 cubic feet or \$190.00 per load. It is one of the few local landfills that collects this debris and does so at an inexpensive cost.

The City has reached out to other providers of disposal services and a recap of their policies and/or quotes is described below.

1. Kurtz Brothers (in Avon) no longer takes our excavation debris and Rosby in Brooklyn Hts. also will not take excavation debris.
2. Cuyahoga Regional Landfill will take excavation debris but are located in Solon which would consume a considerable amount of our employee time to travel to the facility. Once there, if the landfill operator sees any clay pipe in the excavation debris or any other materials they can deem the load 'not clean fill' (for example, debris from a sewer repair or rebar from a street repair) and they would not allow the load to be dumped. The debris then must be taken to a separate MSW Landfill for special waste disposal.
3. Another option is to use containers that are filled at City Hall and taken off our site by a contractor— a quote from Republic Services is attached. The hauling fees from Republic Services are over \$1,000 and during certain months the City would require more than one container.

With respect to the purchase of aggregates Boyas is not the primary source used by the City. However, if there is a debris

drop-off that coincides with a need for aggregate material the City will use Boyas for convenience and/or out of necessity depending upon the time or project at hand.

Vendor Audit Trail Report

AS OF: 08/07/2020

2015

STARTING VENDOR: BOYAS60
 STARTING DATE :
 STARTING ACCT :

ENDING VENDOR: BOYAS60
 ENDING DATE : 12/31/9999
 ENDING ACCT : zzzzzzzzzzzzzz

VENDOR INVOICE	JOURNAL/ INV DATE	POST DATE	DOCUMENT DESCRIPTION	ACCOUNT NUMBER	CHECK NUMBER	POST BATCH	DR AMOUNT	CR AMOUNT	OTHER AMT
BOYAS60	BOYAS AGGREGATES AND MATERIALS LLC								
100525a	10/02/2015	10/08/15	TOPSOIL/MULCH/STONE	811-7711-5234100	0000031658	4377	398.25	0.00	0.00
101158a	10/19/2015	11/12/15	TOPSOIL/MULCH/STONE	811-7711-5234100	0000032006	4420	333.73	0.00	0.00
101158a	10/19/2015	11/12/15	ROAD REPAIR STONE	811-7711-5234100	0000032006	4420	105.29	0.00	0.00
101795a	11/04/2015	11/12/15	ROAD REPAIR STONE	811-7711-5234100	0000032006	4420	263.79	0.00	0.00
102730a	12/04/2015	12/10/15	ROAD REPAIR STONE	811-7711-5234100	0000032184	4454	150.00	0.00	0.00
95886a	06/05/2015	06/18/15	TOPSOIL/MULCH/STONE	811-7711-5234100	0000030893	4248	381.24	0.00	0.00
98231a	08/05/2015	08/13/15	TOPSOIL/MULCH/STONE	811-7711-5234100	0000031278	4313	404.46	0.00	0.00
98617a	08/15/2015	09/03/15	TOPSOIL/MULCH/STONE	811-7711-5234100	0000031399	4340	382.32	0.00	0.00
98788a	08/19/2015	09/03/15	TOPSOIL/MULCH/STONE	811-7711-5234100	0000031399	4340	341.82	0.00	0.00
98945a	08/24/2015	09/03/15	TOPSOIL/MULCH/STONE	811-7711-5234100	0000031399	4340	505.56	0.00	0.00
99187a	08/28/2015	09/24/15	TOPSOIL/MULCH/STONE	811-7711-5234100	0000031567	4363	409.85	0.00	0.00
99294a	09/01/2015	09/24/15	TOPSOIL/MULCH/STONE	811-7711-5234100	0000031567	4363	342.76	0.00	0.00
TOTAL BOYAS60							4019.08	0.00	0.00
TOTAL REPORT:							4019.08	0.00	0.00

* End of Report: City of Fairview Park *

Vendor Audit Trail Report

AS OF: 08/07/2020

2016

STARTING VENDOR: BOYAS60
STARTING DATE :
STARTING ACCT :

ENDING VENDOR: BOYAS60
ENDING DATE : 12/31/9999
ENDING ACCT : zzzzzzzzzzzzzz

VENDOR INVOICE	JOURNAL/ INV DATE	POST DATE	DOCUMENT DESCRIPTION	ACCOUNT NUMBER	CHECK NUMBER	POST BATCH	DR AMOUNT	CR AMOUNT	OTHER AMT
BOYAS60	BOYAS AGGREGATES AND MATERIALS LLC								
104451a	03/17/2016	04/14/16	ROAD REPAIR STONE	811-7711-5234100	0000032941	4621	379.40	0.00	0.00
10468a	03/25/2016	04/14/16	ROAD REPAIR STONE	811-7711-5234100	0000032941	4621	300.72	0.00	0.00
105098a	04/12/2016	06/03/16	ROAD REPAIR MATERIALS	811-7711-5234100	0000033259	4686	375.90	0.00	0.00
111458a	10/24/2016	11/04/16	ROAD REPAIR STONE	811-7711-5234100	0000034257	4850	269.88	0.00	0.00
111458a	10/24/2016	11/04/16	ROAD REPAIR MATERIALS	811-7711-5234100	0000034257	4850	126.88	0.00	0.00
112770	12/12/2016	12/15/16	ROAD REPAIR MATERIALS	811-7711-5234100	0000034547	4892	431.76	0.00	0.00
			TOTAL BOYAS60				1884.54	0.00	0.00
			TOTAL REPORT:				1884.54	0.00	0.00

* End of Report: City of Fairview Park *

Vendor Audit Trail Report

AS OF: 08/07/2020

2017

STARTING VENDOR: BOYAS60
STARTING DATE :
STARTING ACCT :

ENDING VENDOR: BOYAS60
ENDING DATE : 12/31/9999
ENDING ACCT : zzzzzzzzzzzzzz

VENDOR INVOICE	JOURNAL/ INV DATE	POST DATE	DOCUMENT DESCRIPTION	ACCOUNT NUMBER	CHECK NUMBER	POST BATCH	DR AMOUNT	CR AMOUNT	OTHER AMT
BOYAS60	BOYAS AGGREGATES AND MATERIALS LLC								
112841a	12/16/2016	01/13/17	ROAD REPAIR MATERIALS	811-7711-5234100	0000034654	4927	208.60	0.00	0.00
113854a	03/01/2017	03/10/17	ROAD REPAIR MATERIALS	811-7711-5234100	0000035000	4978	148.28	0.00	0.00
113910a	03/03/2017	03/10/17	ROAD REPAIR MATERIALS	811-7711-5234100	0000035000	4978	176.88	0.00	0.00
113951a	03/07/2017	03/10/17	ROAD REPAIR MATERIALS	811-7711-5234100	0000035000	4978	180.73	0.00	0.00
113980	03/08/2017	03/23/17	ROAD REPAIR MATERIALS	811-7711-5234100	0000035100	4988	171.38	0.00	0.00
114026	03/10/2017	03/23/17	ROAD REPAIR MATERIALS	811-7711-5234100	0000035100	4988	105.71	0.00	0.00
114198a	03/23/2017	04/07/17	ROAD REPAIR MATERIALS	811-7711-5234100	0000035164	5008	177.75	0.00	0.00
114458a	04/05/2017	04/13/17	ROAD REPAIR MATERIALS	811-7711-5234100	0000035234	5014	177.90	0.00	0.00
114501a	04/06/2017	04/13/17	ROAD REPAIR MATERIALS	811-7711-5234100	0000035234	5014	202.95	0.00	0.00
114532a	04/07/2017	04/20/17	ROAD REPAIR MATERIALS	811-7711-5234100	0000035286	5019	184.05	0.00	0.00
			TOTAL BOYAS60				1734.23	0.00	0.00
			TOTAL REPORT:				1734.23	0.00	0.00

* End of Report: City of Fairview Park *

Vendor Audit Trail Report

AS OF: 08/07/2020

2018

STARTING VENDOR: BOYAS60
STARTING DATE :
STARTING ACCT :

ENDING VENDOR: BOYAS60
ENDING DATE : 12/31/9999
ENDING ACCT : zzzzzzzzzzzzzz

VENDOR INVOICE	JOURNAL/ INV DATE	POST DATE	DOCUMENT DESCRIPTION	ACCOUNT NUMBER	CHECK NUMBER	POST BATCH	DR AMOUNT	CR AMOUNT	OTHER AMT
BOYAS60	BOYAS AGGREGATES AND MATERIALS LLC								
122473a	12/21/2017	01/11/18	ROAD REPAIR MATERIALS	811-7711-5234100	0000036999	5313	375.76	0.00	0.00
126390a	07/11/2018	08/09/18	ROAD REPAIR MATERIAL	811-7711-5234100	0000038400	5503	70.72	0.00	0.00
			TOTAL BOYAS60				446.48	0.00	0.00
			TOTAL REPORT:				446.48	0.00	0.00

* End of Report: City of Fairview Park *

Vendor Audit Trail Report

AS OF: 08/07/2020

STARTING VENDOR: BOYAS60
STARTING DATE :
STARTING ACCT :

ENDING VENDOR: BOYAS60
ENDING DATE : 12/31/9999
ENDING ACCT : zzzzzzzzzzzzzz

2019

VENDOR INVOICE	JOURNAL/ INV DATE	POST DATE	DOCUMENT DESCRIPTION	ACCOUNT NUMBER	CHECK NUMBER	POST BATCH	DR AMOUNT	CR AMOUNT	OTHER AMT
BOYAS60	BOYAS AGGREGATES AND MATERIALS LLC								
135556a	05/15/2019	05/23/19	STREET REPAIR MATERIALS	811-7711-5234100	0000040297	5782	324.16	0.00	0.00
	TOTAL		BOYAS60				324.16	0.00	0.00
	TOTAL REPORT:						324.16	0.00	0.00

* End of Report: City of Fairview Park *

Vendor Audit Trail Report

AS OF: 08/07/2020

STARTING VENDOR: BOYAS50
 STARTING DATE :
 STARTING ACCT :

ENDING VENDOR: BOYAS50
 ENDING DATE : 12/31/9999
 ENDING ACCT : zzzzzzzzzzzzzz

2015

VENDOR INVOICE	JOURNAL/ INV DATE	POST DATE	DOCUMENT DESCRIPTION	ACCOUNT NUMBER	CHECK NUMBER	POST BATCH	DR AMOUNT	CR AMOUNT	OTHER AMT
BOYAS50	BOYAS EXCAVATING								
100005	09/21/2015	09/24/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031566	4363	198.00	0.00	0.00
100071	09/22/2015	10/08/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031657	4377	132.00	0.00	0.00
100525	10/02/2015	10/08/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031657	4377	165.00	0.00	0.00
100977	10/14/2015	11/12/15	CLEAN FILL DISPOSAL	100-5550-5242400	0000032005	4420	242.00	0.00	0.00
101795	11/04/2015	11/12/15	CLEAN FILL DISPOSAL	100-5550-5242400	0000032005	4420	121.00	0.00	0.00
102730	12/04/2015	12/10/15	CLEAN FILL DISPOSAL	100-5550-5242400	0000032183	4454	154.00	0.00	0.00
102966	12/15/2015	12/24/15	CLEAN FILL DISPOSAL	100-5550-5242400	0000032296	4475	110.00	0.00	0.00
103026	12/16/2015	12/24/15	CLEAN FILL DISPOSAL	100-5550-5242400	0000032296	4475	473.00	0.00	0.00
103072	12/17/2015	12/24/15	CLEAN FILL DISPOSAL	100-5550-5242400	0000032296	4475	154.00	0.00	0.00
91971	12/18/2014	01/13/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000029787	4036	540.00	0.00	0.00
92021	12/19/2014	01/13/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000029787	4036	315.00	0.00	0.00
92164	12/30/2014	01/13/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000029787	4036	198.00	0.00	0.00
92497	01/26/2015	02/12/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000030030	4076	330.00	0.00	0.00
93482	03/30/2015	04/30/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000030524	4185	275.00	0.00	0.00
93516	03/31/2015	04/30/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000030524	4185	242.00	0.00	0.00
94611	05/01/2015	05/22/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000030685	4208	275.00	0.00	0.00
94780	05/06/2015	05/22/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000030685	4208	418.00	0.00	0.00
94836	05/07/2015	05/22/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000030685	4208	253.00	0.00	0.00
94889	05/08/2015	05/22/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000030685	4208	187.00	0.00	0.00
94936	05/11/2015	05/22/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000030685	4208	264.00	0.00	0.00
95001	05/12/2015	05/22/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000030685	4208	341.00	0.00	0.00
95886	06/05/2015	06/18/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000030892	4248	297.00	0.00	0.00
95994	06/09/2015	06/18/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000030892	4248	209.00	0.00	0.00
96422	06/19/2015	07/10/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031016	4272	40.00	0.00	0.00
96875	07/01/2015	07/10/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031016	4272	825.00	0.00	0.00
96919	07/02/2015	07/10/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031016	4272	385.00	0.00	0.00
97947	07/29/2015	08/13/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031277	4313	242.00	0.00	0.00
98000	07/30/2015	08/13/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031277	4313	396.00	0.00	0.00
98177	08/04/2015	08/13/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031277	4313	190.00	0.00	0.00
98231	08/05/2015	08/13/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031277	4313	429.00	0.00	0.00
98391	08/10/2015	08/13/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031277	4313	473.00	0.00	0.00
98455	08/11/2015	08/20/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031333	4323	132.00	0.00	0.00
98566	08/13/2015	09/03/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031398	4340	165.00	0.00	0.00
98617	08/15/2015	09/03/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031398	4340	407.00	0.00	0.00
98788	08/19/2015	09/03/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031398	4340	132.00	0.00	0.00
98842	08/20/2015	09/03/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031398	4340	297.00	0.00	0.00
98893	08/21/2015	09/03/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031398	4340	495.00	0.00	0.00
98945	08/24/2015	09/03/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031398	4340	330.00	0.00	0.00
99948	09/18/2015	09/24/15	CLEAN FILL DISPOSAL	100-5550-5242200	0000031566	4363	330.00	0.00	0.00
	TOTAL BOYAS50						11161.00	0.00	0.00
	TOTAL REPORT:						11161.00	0.00	0.00

* End of Report: City of Fairview Park *

Vendor Audit Trail Report

AS OF: 08/07/2020

2016

STARTING VENDOR: BOYAS50
STARTING DATE :
STARTING ACCT :

ENDING VENDOR: BOYAS50
ENDING DATE : 12/31/9999
ENDING ACCT : zzzzzzzzzzzzzz

VENDOR INVOICE	JOURNAL/ INV DATE	POST DATE	DOCUMENT DESCRIPTION	ACCOUNT NUMBER	CHECK NUMBER	POST BATCH	DR AMOUNT	CR AMOUNT	OTHER AMT
BOYAS50	BOYAS EXCAVATING								
103518	01/18/2016	02/05/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000032519	4553	440.00	0.00	0.00
104068	02/25/2016	03/10/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000032736	4590	572.00	0.00	0.00
104120	03/01/2016	03/10/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000032736	4590	396.00	0.00	0.00
105040	04/08/2016	06/03/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000033258	4686	336.00	0.00	0.00
105098	04/12/2016	06/03/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000033258	4686	144.00	0.00	0.00
105130	04/13/2016	06/03/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000033258	4686	168.00	0.00	0.00
105445	04/22/2016	06/03/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000033258	4686	288.00	0.00	0.00
105665	04/29/2016	06/03/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000033258	4686	432.00	0.00	0.00
105706	05/02/2016	06/03/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000033258	4686	456.00	0.00	0.00
105793	05/04/2016	06/03/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000033258	4686	288.00	0.00	0.00
107155	06/15/2016	09/22/16	BOHLKEN CLEAN FILL DIRT	230-3250-5234700	0000033985	4800	720.00	0.00	0.00
107200	06/16/2016	09/22/16	BOHLKEN CLEAN FILL DIRT	230-3250-5234700	0000033985	4800	648.00	0.00	0.00
107246	06/17/2016	07/14/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000033527	4735	144.00	0.00	0.00
107913	07/08/2016	07/21/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000033584	4740	144.00	0.00	0.00
107967	07/11/2016	07/21/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000033584	4740	96.00	0.00	0.00
108616	07/28/2016	08/04/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000033650	4756	144.00	0.00	0.00
108665	07/29/2016	08/04/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000033650	4756	144.00	0.00	0.00
109701	08/30/2016	09/16/16	CLEAN FILL DISPOSAL	100-5550-5242400	0000033933	4795	504.00	0.00	0.00
110043	09/29/2016	10/07/16	CLEAN FILL DISPOSAL	100-5550-5242200	0000034077	4822	432.00	0.00	0.00
110122	09/29/2016	10/07/16	CLEAN FILL DISPOSAL	100-5550-5242200	0000034077	4822	408.00	0.00	0.00
111383	10/20/2016	11/04/16	CLEAN FILL DISPOSAL	100-5550-5242200	0000034256	4850	144.00	0.00	0.00
111458	10/24/2016	11/04/16	CLEAN FILL DISPOSAL	100-5550-5242200	0000034256	4850	144.00	0.00	0.00
111641	10/28/2016	11/10/16	CLEAN FILL DISPOSAL	100-5550-5242200	0000034313	4854	60.00	0.00	0.00
TOTAL BOYAS50							7252.00	0.00	0.00
TOTAL REPORT:							7252.00	0.00	0.00

* End of Report: City of Fairview Park *

Vendor Audit Trail Report

AS OF: 08/07/2020

2017

STARTING VENDOR: BOYAS50
 STARTING DATE :
 STARTING ACCT :

ENDING VENDOR: BOYAS50
 ENDING DATE : 12/31/9999
 ENDING ACCT : zzzzzzzzzzzz

VENDOR INVOICE	JOURNAL/ INV DATE	POST DATE	DOCUMENT DESCRIPTION	ACCOUNT NUMBER	CHECK NUMBER	POST BATCH	DR AMOUNT	CR AMOUNT	OTHER AMT
BOYAS50	BOYAS EXCAVATING								
113734	02/23/2017	03/10/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000034999	4978	408.00	0.00	0.00
113764	02/24/2017	03/10/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000034999	4978	408.00	0.00	0.00
113797	02/27/2017	03/10/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000034999	4978	312.00	0.00	0.00
113824	02/28/2017	03/10/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000034999	4978	144.00	0.00	0.00
114501	04/06/2017	04/13/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000035233	5014	168.00	0.00	0.00
114532	04/07/2017	04/20/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000035285	5019	144.00	0.00	0.00
115157	05/02/2017	05/12/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000035415	5042	576.00	0.00	0.00
115188	05/03/2017	05/12/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000035415	5042	288.00	0.00	0.00
116519	06/13/2017	06/29/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000035718	5101	288.00	0.00	0.00
117168	07/05/2017	07/13/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000035794	5120	288.00	0.00	0.00
117472	07/13/2017	07/26/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000035898	5131	264.00	0.00	0.00
117515	07/17/2017	07/26/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000035898	5131	576.00	0.00	0.00
117560	07/17/2017	07/26/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000035898	5131	672.00	0.00	0.00
118435	08/10/2017	08/17/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000036013	5147	504.00	0.00	0.00
118483	08/11/2017	08/17/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000036013	5147	144.00	0.00	0.00
118806	08/22/2017	08/31/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000036100	5165	204.00	0.00	0.00
120710	10/17/2017	10/20/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000036436	5219	60.00	0.00	0.00
120766	10/18/2017	10/20/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000036436	5219	132.00	0.00	0.00
121306	11/02/2017	11/16/17	CLEAN FILL DISPOSAL	100-5550-5242200	0000036610	5255	144.00	0.00	0.00
TOTAL BOYAS50							5724.00	0.00	0.00
TOTAL REPORT:							5724.00	0.00	0.00

* End of Report: City of Fairview Park *

Vendor Audit Trail Report

AS OF: 07/20/2020

2018

STARTING VENDOR: BOYAS50
STARTING DATE :
STARTING ACCT :

ENDING VENDOR: BOYAS50
ENDING DATE : 12/31/9999
ENDING ACCT : zzzzzzzzzzzzz

VENDOR INVOICE	JOURNAL/ INV DATE	POST DATE	DOCUMENT DESCRIPTION	ACCOUNT NUMBER	CHECK NUMBER	POST BATCH	DR AMOUNT	CR AMOUNT	OTHER AMT
BOYAS50	BOYAS EXCAVATING								
122769	01/29/2018	02/22/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000037242	5344	420.00	0.00	0.00
123571	03/26/2018	04/12/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000037551	5395	276.00	0.00	0.00
124403	04/27/2018	05/10/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000037800	5420	200.00	0.00	0.00
125499	06/01/2018	06/06/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000037973	5442	375.00	0.00	0.00
125749	06/08/2018	06/14/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038019	5449	100.00	0.00	0.00
125801	06/11/2018	06/14/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038019	5449	125.00	0.00	0.00
125856	06/12/2018	06/28/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038128	5468	250.00	0.00	0.00
126128	06/19/2018	06/28/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038128	5468	250.00	0.00	0.00
126183	06/20/2018	07/12/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038187	5480	350.00	0.00	0.00
126241	06/21/2018	07/12/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038187	5480	100.00	0.00	0.00
126390	06/26/2018	07/12/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038187	5480	200.00	0.00	0.00
126489	06/28/2018	07/12/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038187	5480	325.00	0.00	0.00
126726	07/06/2018	07/12/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038187	5480	250.00	0.00	0.00
127095	07/17/2018	07/25/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038290	5485	375.00	0.00	0.00
127527	07/27/2018	08/09/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038399	5503	250.00	0.00	0.00
127579	07/30/2018	08/09/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038399	5503	375.00	0.00	0.00
128426	08/22/2018	09/06/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038638	5533	125.00	0.00	0.00
128570	08/27/2018	09/06/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038638	5533	250.00	0.00	0.00
128880	09/05/2018	09/12/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038698	5535	125.00	0.00	0.00
129240	09/14/2018	09/28/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038760	5547	150.00	0.00	0.00
129353	09/18/2018	09/28/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038760	5547	375.00	0.00	0.00
130078	10/08/2018	10/25/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038936	5568	250.00	0.00	0.00
130133	10/09/2018	10/25/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038936	5568	275.00	0.00	0.00
130178	10/10/2018	10/25/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038936	5568	1150.00	0.00	0.00
130238	10/12/2018	10/18/18	CLEAN FILL DISPOSAL	100-5550-5242200	0000038902	5565	500.00	0.00	0.00
			TOTAL BOYAS50				7421.00	0.00	0.00
			TOTAL REPORT:				7421.00	0.00	0.00

* End of Report: City of Fairview Park *

Vendor Audit Trail Report

AS OF: 07/20/2020

2019

STARTING VENDOR: BOYAS50
STARTING DATE :
STARTING ACCT :

ENDING VENDOR: BOYAS50
ENDING DATE : 12/31/9999
ENDING ACCT : zzzzzzzzzzzzz

VENDOR INVOICE	JOURNAL/ INV DATE	POST DATE	DOCUMENT DESCRIPTION	ACCOUNT NUMBER	CHECK NUMBER	POST BATCH	DR AMOUNT	CR AMOUNT	OTHER AMT
BOYAS50	BOYAS EXCAVATING								
132873	02/08/2019	02/28/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000039720	5702	250.00	0.00	0.00
132899	02/11/2019	02/28/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000039720	5702	425.00	0.00	0.00
132943	02/13/2019	02/28/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000039720	5702	287.50	0.00	0.00
132994	02/15/2019	02/28/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000039720	5702	625.00	0.00	0.00
134921	04/29/2019	05/03/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000040144	5769	1025.00	0.00	0.00
135501	05/14/2019	05/23/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000040296	5782	175.00	0.00	0.00
135556	05/15/2019	05/23/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000040296	5782	437.50	0.00	0.00
135711	05/20/2019	06/03/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000040364	5801	785.00	0.00	0.00
136299	06/06/2019	06/13/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000040435	5806	487.50	0.00	0.00
136353	06/07/2019	06/13/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000040435	5806	325.00	0.00	0.00
136511	06/12/2019	07/11/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000040618	5835	150.00	0.00	0.00
136778	06/19/2019	07/11/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000040618	5835	825.00	0.00	0.00
136886	06/21/2019	07/11/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000040618	5835	500.00	0.00	0.00
138082	07/25/2019	08/09/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000040789	5867	150.00	0.00	0.00
138537	08/07/2019	08/22/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000040903	5881	200.00	0.00	0.00
138594	08/08/2019	08/22/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000040903	5881	362.50	0.00	0.00
138798	08/14/2019	08/22/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000040903	5881	262.50	0.00	0.00
139433	09/03/2019	09/13/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000041018	5902	275.00	0.00	0.00
139487	09/04/2019	09/13/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000041018	5902	100.00	0.00	0.00
139487	09/04/2019	09/13/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000041018	5902	50.00	0.00	0.00
139591	09/06/2019	09/19/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000041080	5905	650.00	0.00	0.00
140586	10/03/2019	10/11/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000041197	5925	612.50	0.00	0.00
140631	10/04/2019	10/17/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000041277	5928	250.00	0.00	0.00
140720	10/08/2019	10/17/19	CLEAN FILL DISPOSAL	100-5550-5242200	0000041277	5928	550.00	0.00	0.00
			TOTAL BOYAS50				9760.00	0.00	0.00
			TOTAL REPORT:				9760.00	0.00	0.00

* End of Report: City of Fairview Park *

Vendor Audit Trail Report

AS OF: 07/20/2020

2020

STARTING VENDOR: BOYAS50
STARTING DATE :
STARTING ACCT :

ENDING VENDOR: BOYAS50
ENDING DATE : 12/31/9999
ENDING ACCT : zzzzzzzzzzzzz

VENDOR INVOICE	JOURNAL/ INV DATE	POST DATE	DOCUMENT DESCRIPTION	ACCOUNT NUMBER	CHECK NUMBER	POST BATCH	DR AMOUNT	CR AMOUNT	OTHER AMT
BOYAS50	BOYAS EXCAVATING								
143333	01/15/2020	01/30/20	CLEAN FILL DISPOSAL	100-5550-5242200	0000041925	6047	312.50	0.00	0.00
143398	01/18/2020	01/30/20	CLEAN FILL DISPOSAL	100-5550-5242200	0000041925	6047	362.50	0.00	0.00
143514	01/25/2020	01/30/20	CLEAN FILL DISPOSAL	100-5550-5242200	0000041925	6047	250.00	0.00	0.00
143861	02/11/2020	02/20/20	CLEAN FILL DISPOSAL	100-5550-5242200	0000042071	6065	375.00	0.00	0.00
146514	05/14/2020	05/28/20	CLEAN FILL DISPOSAL	100-5550-5242200	0000042623	6158	300.00	0.00	0.00
146570	05/16/2020	05/28/20	CLEAN FILL DISPOSAL	100-5550-5242200	0000042623	6158	150.00	0.00	0.00
			TOTAL BOYAS50				1750.00	0.00	0.00
			TOTAL REPORT:				1750.00	0.00	0.00

* End of Report: City of Fairview Park *

CITY OF FAIRVIEW PARK

RESOLUTION NO. 20-

REQUESTED BY: MARY KAY COSTELLO, DIRECTOR OF PUBLIC SERVICE AND DEVELOPMENT

SPONSORED BY: COUNCILWOMAN KING

A RESOLUTION TO APPROVE TWO PETITIONS FOR SPECIAL ASSESSMENTS FOR SPECIAL ENERGY IMPROVEMENT PROJECTS UNDER OHIO REVISED CODE CHAPTER 1710 AND APPROVE THE NECESSITY OF ACQUIRING, INSTALLING, EQUIPPING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF FAIRVIEW PARK, OHIO IN COOPERATION WITH THE NORTHEAST OHIO ADVANCED ENERGY DISTRICT (21000 BROOKPARK ROAD PROJECTS)

WHEREAS, Ohio Revised Code Section 1710.02(F) provides that a political subdivision which has approved a petition for special assessments for public improvements in an energy special improvement district and a plan pursuant to Ohio Revised Code Sections 1710.02(F) and 1710.06 shall levy the requested special assessments pursuant to Ohio Revised Code Chapter 727; and

WHEREAS, 21000 Brookpark Landlord LLC, as the owner of certain real property (together with its successors in interest, the “K Building Owner”) located within the City of Fairview Park, Ohio (the “City”), has identified certain real property located at 21000 Brookpark Road, having Cuyahoga County Parcel ID Number 331-35-002, and being more particularly described in Exhibit B to the K Building Petition (as defined below) (the “K Building Project Site”), as an appropriate property for a special energy improvement project pursuant to Ohio Revised Code Chapter 1710; and

WHEREAS, 21000 Brookpark Landlord LLC, as the owner of certain real property (together with its successors in interest, the “L Building Owner,” and collectively with the K Building Owner, the “Owners”) located within the City of Fairview Park, Ohio (the “City”), has identified certain real property located at 21000 Brookpark Road, having Cuyahoga County Parcel ID Number 331-35-002, and being more particularly described in Exhibit B to the L Building Petition (as defined below) (the “L Building Project Site,” and collectively with the K Building Project Site, the “Project Sites”), as an appropriate property for a special energy improvement project pursuant to Ohio Revised Code Chapter 1710; and

WHEREAS, the Northeast Ohio Advanced Energy District (the “District”) was created under Ohio Revised Code Chapters 1702 and 1710 as an energy special improvement district and is governed by the Northeast Ohio Advanced Energy Special Improvement District Commercial-Industrial Program Project Plan and the Northeast Ohio Advanced Energy Special Improvement District Commercial-Industrial Program Services Plan (together, and as amended and supplemented from time to time, the “Program Plan”) was adopted as a plan for public improvements and public services under Ohio Revised Code Section 1710.02(F), which plan allows for additional properties within the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, Village of Brooklyn Heights, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of East Cleveland,

Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Independence, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Middleburg Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, Ohio, City of South Euclid, Ohio, and the City of University Heights, Ohio and within any municipal corporation or township which is adjacent to any other municipal corporation or township in which a portion of the District's territory is located to be added to the territory of the District; and

WHEREAS, the K Building Owner has determined to submit to the Mayor and the City Council of the City (the "Council"), a *Petition to Add Territory to the Northeast Ohio Advanced Energy District and for Special Energy Improvement Project* (the "K Building Petition"), the *Commercial-Industrial Program Project Plan* and the *Commercial-Industrial Services Plan* (collectively, the "Program Plan"), and the *Articles of Incorporation of the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, Village of Brooklyn Heights, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of East Cleveland, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Independence, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Middleburg Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc.* (the "Articles of Incorporation"), all in accordance with Ohio Revised Code Section 1710.02, each of which are now on file with the Clerk of this Council; and

WHEREAS, the L Building Owner has determined to submit to the Mayor and the Council, a *Petition to Add Territory to the Northeast Ohio Advanced Energy District and for Special Energy Improvement Project* (the "L Building Petition," and together with the K Building Petition, the "Petitions"), the Program Plan, and the Articles of Incorporation, all in accordance with Ohio Revised Code Section 1710.02, each of which are now on file with the Clerk of this Council; and

WHEREAS, the Petitions, which are on file with the Clerk of Council, have been signed by the Owners, as the owners of one hundred percent (100%) of the real property affected by the Petitions (as further described in Exhibit B to each of the Petitions); and

WHEREAS, the Petitions request that the Project Sites be added to the District and that the City levy special assessments on the Project Sites to pay the costs of special energy improvement projects to be provided on each of the Project Sites, all as described more particularly in the Petitions (collectively, the "Projects"); and

WHEREAS, the Petitions are for the purpose of developing and implementing special energy improvement projects in furtherance of the purposes set forth in Section 2o of Article VIII of the Ohio Constitution, including, without limitation, the Projects, and further, the Petitions identify the amount and length of the special assessments to be imposed with respect to the Projects; and

WHEREAS, by the Petitions, the Owners request that the Projects be paid for by special assessments assessed upon the Project Sites (the "Special Assessments") in an amount sufficient

to pay the costs of the Projects, including the costs identified in Section 5 of this Resolution, and requests that the Projects be undertaken cooperatively by the City, the District, and such other parties as the City may deem necessary or appropriate; and

WHEREAS, in furtherance of the future addition of any real property in any municipal corporation or township contiguous to the municipal corporations or townships in which a portion of the territory of the District is located, it is necessary, and this Council has determined, to approve the addition of such real property to the territory of the District, all in accordance with Ohio Revised Code Chapter 1710; and

WHEREAS, this Council, pursuant to Ohio Revised Code Section 1710.02(G)(4), has determined that the energy special improvement projects to be constructed and implemented on the Project Sites are not required to be owned exclusively by the City for its purposes, for uses determined by this Council, as the legislative authority of the City as those that will promote the welfare of the people of the City; to improve the quality of life and the general and economic well-being of the people of City; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control, prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or to provide for safe and natural areas and resources; and,

WHEREAS, this Council, as mandated by Ohio Revised Code Chapter 1710, must approve or disapprove the Petitions within 60 days of the submission of the Petitions; and

WHEREAS, this Council has determined to approve the Petitions, the Program Plan, and the Articles of Incorporation.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FAIRVIEW PARK, COUNTY OF CUYAHOGA AND STATE OF OHIO:

SECTION 1. That each capitalized term not otherwise defined in this Resolution or by reference to another document shall have the meaning assigned to it in the Petitions.

SECTION 2. That this Council approves the Petitions, the Program Plan, and the Articles of Incorporation now on file with the Clerk of Council. This Council hereby appoints the City's Director of Public Service and Development or the Director's designee to serve on the Board of Directors of the District as provided in Ohio Revised Code Section 1710.04(A).

SECTION 3. That this Council hereby approves and consents to (i) any addition of real property to the territory of the District within the boundaries of any municipal corporation or township in which a portion of the territory of the District is located or any municipal corporation or township which is contiguous to the municipal corporations or townships in which a portion of the territory of the District is located; (ii) the addition of the municipal corporation or township in which such real property is located as a "participating political subdivision," as defined in Ohio Revised Code Section 1710.01(E), of the District; and (iii) any amendment to the Articles of Incorporation necessary to recognize or effect such addition.

SECTION 4. That pursuant to Ohio Revised Code Section 1710.02(G)(4), this Council determines that the Projects are not required to be owned exclusively by the City for its purposes, for uses determined by this Council, as the legislative authority of the City, as those that will promote the welfare of the people of such participating political subdivision; to improve the quality of life and the general and economic well-being of the people of the City; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control, prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or to provide for safe and natural areas and resources. This Council accordingly authorizes the Board of Directors of the District (the "Board") to act as its agent to sell, transfer, lease, or convey the Projects. The consideration the Board must obtain from any sale, transfer, lease, or conveyance of the special energy improvement projects on each of the Project Sites is any consideration greater than or equal to One Dollar and Zero Cents (\$1.00) each.

SECTION 5. That this Council declares necessary, and a vital and essential public purpose of the City, to improve the K Building Project Site, which is located at 21000 Brookpark Road in the City and has Cuyahoga County Parcel ID Number 331-35-002 and is more particularly described in Exhibit B to the K Building Petition, by providing for the acquisition, installation, equipment, and improvement of the portion of the Projects described in the K Building Petition (the "K Building Project") by the K Building Owner, as set forth in the K Building Petition, and providing for the payment of the costs of the K Building Project, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the K Building Project and the interest on such damages; the costs incurred in connection with the preparation, levy and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; expenses of legal services; costs of labor and material; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued or incurred to provide a loan or to secure an advance of funds to the K Building Owner or otherwise to pay costs of the K Building Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued or incurred, including any credit enhancement fees, trustee fees, program administration fees, financing servicing fees, and District administrative fees and expenses; an amount to reflect interest on unpaid Special Assessments which shall be treated as part of the cost of the K Building Project for which the Special Assessments are made at an interest rate which shall be determined by the District as its conduit financing entity to be substantially equivalent to the fair market rate that would have been borne by notes or bonds if notes or bonds had been issued by the District or another issuer of notes or bonds to pay the costs of the K Building Project; together with all other necessary expenditures, all as more fully described in the K Building Petition, and profiles, specifications, and estimates of cost of the K Building Project, all of which are on file with the Finance Director and open to the inspection of all persons interested.

That this Council declares necessary, and a vital and essential public purpose of the City, to improve the L Building Project Site, which is located at 21000 Brookpark Road in the City and has Cuyahoga County Parcel ID Number 331-35-002 and is more particularly described in Exhibit B to the K Building Petition, by providing for the acquisition, installation, equipment, and

improvement of the portion of the Projects described in the L Building Petition (the “L Building Project”) by the L Building Owner, as set forth in the L Building Petition, and providing for the payment of the costs of the L Building Project, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the L Building Project and the interest on such damages; the costs incurred in connection with the preparation, levy and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; expenses of legal services; costs of labor and material; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued or incurred to provide a loan or to secure an advance of funds to the L Building Owner or otherwise to pay costs of the L Building Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued or incurred, including any credit enhancement fees, trustee fees, program administration fees, financing servicing fees, and District administrative fees and expenses; an amount to reflect interest on unpaid Special Assessments which shall be treated as part of the cost of the L Building Project for which the Special Assessments are made at an interest rate which shall be determined by the District as its conduit financing entity to be substantially equivalent to the fair market rate that would have been borne by notes or bonds if notes or bonds had been issued by the District or another issuer of notes or bonds to pay the costs of the L Building Project; together with all other necessary expenditures, all as more fully described in the L Building Petition, and profiles, specifications, and estimates of cost of the L Building Project, all of which are on file with the Finance Director and open to the inspection of all persons interested.

SECTION 6. That this Council determines that each of the K Building Project and the L Building Project’s elements are so situated in relation to each other that in order to complete each of the K Building Project the L Building Project’s elements in the most practical and economical manner, they should be acquired, installed, equipped, and improved at the same time, with the same kind of materials, and in the same manner; and that each of the K Building Project the L Building Project’s elements shall be treated as a single improvement, pursuant to Ohio Revised Code Section 727.09, and each of the K Building Project and the L Building Project’s elements shall be treated as a joint improvement to be undertaken cooperatively by the City and the District pursuant to Ohio Revised Code Section 9.482 and Ohio Revised Code Chapter 1710.

SECTION 7. That the plans and specifications and total cost of the Projects now on file in the office of the Clerk of Council are approved, subject to changes as permitted by Ohio Revised Code Chapter 727. The Projects shall be made in accordance with the plans, specifications, profiles, and estimate of costs for the Projects.

SECTION 8. That this Council determines and declares that the Projects are an essential and vital public, governmental purpose of the City as special energy improvement projects, as defined in Ohio Revised Code Section 1710.01(I); and that in order to fulfill that essential and vital public purpose of the City, it is necessary and proper to provide, in cooperation with the District, for the acquisition, installation, equipment, and improvement of the Projects in the manner contemplated by the Petitions. This Council determines and declares that the Projects are conducive to the public peace, health, safety and welfare of the City and the inhabitants of the City.

SECTION 9. That pursuant to and subject to the provisions of valid Petitions signed by the owners of one hundred percent (100%) of the Project Sites, the entire cost of the Projects shall be paid by the Special Assessments levied against the Project Sites, which are the benefited properties. The provisions of the Petitions and the Program Plan are ratified, adopted, approved and incorporated into this Resolution as if set forth in full in this Resolution. The portion of the costs of the Projects allocable to the City will be zero percent (0%). The City does not intend to issue securities in anticipation of the levy or the collection of the Special Assessments.

SECTION 10. That the method of levying the Special Assessments shall be in proportion to the benefits received, allocated among the parcels constituting each of the Project Sites as set forth in the Petitions and the Program Plan.

SECTION 11. That the lots or parcels of land to be assessed for the Projects shall be the Project Sites, described in Exhibit B to each of the Petitions, all of which lots and lands are determined to be specially benefited by the Projects as set forth in the Petitions. Each of the K Building Project Site and the L Building Project Site, as of the date of this Resolution, constitute a portion of a single tax parcel in the records of the Cuyahoga County Fiscal Officer. As provided in the Petitions, if, after the date of this Resolution, the tax parcel is subdivided such that either or both of the Project Sites are situated on one or more new or additional tax parcels, all of the Special Assessments levied on either such Project Site shall be allocated to the resulting tax parcels containing a portion of the applicable Project Site, and the special assessments allocated to those tax parcels shall be allocated among those tax parcels in proportion to the building square footage on any such resulting tax parcel.

SECTION 12. That the Special Assessments shall be levied and paid in 50 semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petitions (which list is incorporated herein by reference), and each of the Owners have waived its option to pay the Special Assessment in cash within 30 days after the first publication of the notice of the assessing resolution or ordinance.

The aggregate amount of Special Assessments estimated to be necessary to pay the costs of the K Building Project is \$10,805,575. Each semi-annual Special Assessment payment represents payment of a portion of the principal of and interest on obligations issued or incurred to pay the costs of the K Building Project and of administrative expenses. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, shall be treated as part of the cost of the K Building Project for which the Special Assessments are made at an interest rate which shall be determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds had notes or bonds been issued by the City or another issuer of notes or bonds to pay the costs of the K Building Project. In addition to the Special Assessments, the County Fiscal Officer of Cuyahoga County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount will be added to the Special Assessments by the County Fiscal Officer of Cuyahoga County, Ohio.

The aggregate amount of Special Assessments estimated to be necessary to pay the costs of the L Building Project is \$5,840,100. Each semi-annual Special Assessment payment represents payment of a portion of the principal of and interest on obligations issued or incurred to pay the costs of the L Building Project and of administrative expenses. The interest portion of the Special

Assessments, together with amounts used to pay administrative expenses, shall be treated as part of the cost of the L Building Project for which the Special Assessments are made at an interest rate which shall be determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds had notes or bonds been issued by the City or another issuer of notes or bonds to pay the costs of the L Building Project. In addition to the Special Assessments, the County Fiscal Officer of Cuyahoga County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount will be added to the Special Assessments by the County Fiscal Officer of Cuyahoga County, Ohio.

SECTION 13. That the Director of Finance or the Director's designee is authorized and directed to prepare and file in the office of the Clerk of Council the estimated Special Assessments for the cost of the Projects in accordance with the method of assessment set forth in the Petitions and this Resolution, showing the amount of the assessment against each lot or parcel of land to be assessed.

SECTION 14. That the Owners have waived the requirement that notice of the adoption of this Resolution and the filing of the estimated Special Assessments upon the Owners of the Property to be assessed as provided in Ohio Revised Code Section 727.13 be delivered promptly following adoption of this Resolution.

SECTION 15. That the Director of Finance or the Director's designee is authorized, pursuant to Ohio Revised Code Section 727.12, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the Projects.

SECTION 16. That the Special Assessments will be used by the City to pay the costs of the Projects in cooperation with the District in any manner, including assigning the Special Assessments actually received by the City to the District or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

SECTION 17. That this Council accepts and approves the waiver of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Ohio Revised Code Chapter 727, Ohio Revised Code Chapter 1710, and the Charter of the City of Fairview Park, Ohio, and consents to the immediate imposition of the Special Assessments upon the Project Sites. This waiver encompasses, but is not limited to, waivers by each of the Owners in the Petitions of the following rights:

- (i) The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- (ii) The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06;
- (iii) The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- (iv) The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;

- (v) The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- (vi) The right to notice that bids or quotations for the Project may exceed estimates by 15%;
- (vii) The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251;
- (viii) The right to notice of the passage of the assessing resolution or ordinance under Ohio Revised Code Section 727.26; and
- (ix) Any and all procedural defects, errors, or omissions in the Special Assessment process.

SECTION 18. That the City is authorized to enter into agreements by and among the City, the District, and such other parties as the City may deem necessary or appropriate in order to carry out the Project, and that the Mayor, the Director of Public Service and Development, either of them individually, or either of their designee is authorized to execute, on the City's behalf, such agreements.

SECTION 19. That this legislative authority hereby finds and determines that all formal actions taken relative to the passage of this Resolution were taken in an open meeting of this legislative authority, and that all deliberations of this legislative authority and of its committees, if any, which resulted in formal action were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code, as modified by Am. Sub. H.B. 97 of the 133rd Ohio General Assembly, effective March 27, 2020.

SECTION 20. That pursuant to Section 12(a) of Article IV of the Charter of the City of Fairview Park, Ohio, this Resolution provides for improvements petitioned for by the owners of a majority of the front footage of property to be benefited and specially assessed therefor and is effective at the earliest possible time allowed therein.

PASSED:
APPROVED:

1st reading:
2nd reading:
3rd reading:

Michael P. Kilbane, President of Council

Patrick J. Cooney, Mayor

Liz L. Westbrooks, Clerk of Council

CITY OF FAIRVIEW PARK

RESOLUTION NO. 20-

REQUESTED BY: MARY KAY COSTELLO, DIRECTOR OF PUBLIC SERVICE &
DEVELOPMENT

SPONSORED BY: COUNCILWOMAN KING

CO-SPONSORED BY: COUNCILMAN MINEK

AN ORDINANCE TO DETERMINE TO PROCEED WITH THE ACQUISITION, INSTALLATION, EQUIPMENT, AND IMPROVEMENT OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF FAIRVIEW PARK, OHIO IN COOPERATION WITH THE NORTHEAST OHIO ADVANCED ENERGY DISTRICT (21000 BROOKPARK ROAD PROJECTS)

WHEREAS, the Council (“Council”) of the City of Fairview Park, Ohio (the “City”) duly adopted Resolution _____ on _____, 2020 (the “Resolution of Necessity”), (i) declaring the necessity of acquiring, installing, equipping, and improving energy efficiency improvements, including, without limitation, energy efficient roof, energy efficient windows, energy efficient walls, energy efficient skylight, high efficiency lighting, high efficiency boiler, dedicated outdoor air system, water source heat pumps, reduced flow residential showers and aerators resulting in energy savings, energy efficient elevators, and related improvements (the “K Building Project,” as more fully described in the K Building Petition referenced in this Resolution) located on real property owned by 21000 Landlord LLC (together with its successors in interest, the “K Building Owner”) at 21000 Landlord LLC within the City, having Cuyahoga County Parcel ID Number 331-35,002 (the “K Building Project Site”, as more fully described in Exhibit B to the K Building Petition); (ii) providing for the acquisition, installation, equipment, and improvement of the Project by the Owner, as set forth in the K Building Owner’s *Petition to Add Territory to the Northeast Ohio Advanced Energy District and for Special Energy Improvement Project* (the “K Building Petition”), including by levying and collecting special assessments to be assessed upon the K Building Project Site (the “Special Assessments”) in an amount sufficient to pay the costs of the K Building Project, which was estimated to be \$10,805,575 in the K Building Petition, including other related costs of financing the K Building Project, which may include, without limitation, the payment of principal of and interest on nonprofit corporate obligations issued to pay the costs of the K Building Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and Northeast Ohio Advanced Energy Improvement District (“District”) administrative fees and expenses; and (iii) determining that the K Building Project will be treated as a special energy improvement project to be undertaken cooperatively by the City and the District; and

WHEREAS, the Resolution of Necessity was also adopted for the purposes of, (i) declaring the necessity of acquiring, installing, equipping, and improving energy efficiency improvements, including, without limitation, energy efficient roof, energy efficient walls, energy efficient windows, energy efficient skylight, high efficiency lighting, high efficiency boiler, dedicated outdoor air system, water source heat pumps, reduced flow residential showers and aerators

resulting in energy savings, energy efficient elevators and related improvements (the “L Building Project,” as more fully described in the L Building Petition referenced in this Resolution, and together with the K Building Project, the “Projects”) located on real property owned by 21000 Brookpark Landlord LLC (together with its successors in interest, the “L Building Owner,” and together with the K Building Owner, the “Owners”) at 21000 Landlord LLC within the City, having Cuyahoga County Parcel ID Number 331-35,002 within the City (the “L Building Project Site”, as more fully described in Exhibit B to the L Building Petition, and together with the K Building Project Site, the “Project Sites”); (ii) providing for the acquisition, installation, equipment, and improvement of the Project by the Owner, as set forth in the L Building Owner’s *Petition to Add Territory to the Northeast Ohio Advanced Energy District and for Special Energy Improvement Project* (the “L Building Petition,” and together with the K Building Petition, the “Petitions”), including by levying and collecting special assessments to be assessed upon the L Building Project Site (the “Special Assessments”) in an amount sufficient to pay the costs of the L Building Project, which was estimated to be \$5,840,100 in the L Building Petition, including other related costs of financing the L Building Project, which may include, without limitation, the payment of principal of and interest on nonprofit corporate obligations issued to pay the costs of the L Building Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and District administrative fees and expenses; and (iii) determining that the L Building Project will be treated as a special energy improvement project to be undertaken cooperatively by the City and the District; and

WHEREAS, the claims for damages alleged to result from, and objections to, the Projects have been waived by one hundred percent (100%) of the Owners, and no claims for damages alleged to result from, or objections to, the Projects have been filed within the times prescribed by Ohio Revised Code Sections 727.15 and 727.18.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FAIRVIEW PARK, COUNTY OF CUYAHOGA AND STATE OF OHIO:

SECTION 1. That each capitalized term not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Resolution of Necessity.

SECTION 2. That this Council declares that its intention is to proceed or to cooperate with the District to proceed with the acquisition, installation, equipment, and improvement of the Projects described in the Petitions and the Resolution of Necessity. The Projects shall be made in accordance with the provisions of the Resolution of Necessity and with the plans, specifications, profiles, and estimates of cost previously approved and now on file with the Director of Finance and the Clerk of this Council.

SECTION 3. That the Special Assessments to pay costs of the K Building Project, which are estimated to be \$10,805,575 including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the Project and the interest on such damages; the costs incurred in connection with the preparation, levy and collection of the

special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; expenses of legal services; costs of labor and material; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued or incurred to provide a loan or to secure an advance of funds to the K Building Owner or otherwise to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued or incurred, including any credit enhancement fees, trustee fees, program administration fees, financing servicing fees, and District administrative fees and expenses; an amount to reflect interest on unpaid Special Assessments which shall be treated as part of the cost of the K Building Project for which the Special Assessments are made at an interest rate which shall be determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds if notes or bonds had been issued by the District or another issuer of notes or bonds to pay the costs of the K Building Project; together with all other necessary expenditures, shall be assessed against the Property in the manner and in the number of semi-annual installments provided in the K Building Petition and the Resolution of Necessity. Each semi-annual Special Assessment payment represents the payment of a portion of any principal repayment and interest and administrative fees payable with respect to the K Building Project. The Special Assessments shall be assessed against the Property commencing in tax year 2021 for collection in 2022 and shall continue through tax year 2045 for collection in 2046; provided, however, if the proceedings relating to the Special Assessments are completed at such time that the County Fiscal Officer of Cuyahoga County, Ohio determines that collections shall not commence in 2022, then the collection schedule may be deferred by one year. In addition to the Special Assessments, the County Fiscal Officer of Cuyahoga County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount, if imposed, will be added to the Special Assessments by the County Fiscal Officer of Cuyahoga County, Ohio.

That the Special Assessments to pay costs of the L Building Project, which are estimated to be \$5,840,100 including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the Project and the interest on such damages; the costs incurred in connection with the preparation, levy and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; expenses of legal services; costs of labor and material; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued or incurred to provide a loan or to secure an advance of funds to the L Building Owner or otherwise to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued or incurred, including any credit enhancement fees, trustee fees, program administration fees, financing servicing fees, and District administrative fees and expenses; an amount to reflect interest on unpaid Special Assessments which shall be treated as part of the cost of the L Building Project for which the Special Assessments are made at an interest rate which shall be determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds if notes or bonds had been issued by the District or another issuer of notes or bonds to pay the costs of the L Building Project; together with all other necessary expenditures, shall be assessed against the Property in the manner and in the

number of semi-annual installments provided in the L Building Petition and the Resolution of Necessity. Each semi-annual Special Assessment payment represents the payment of a portion of any principal repayment and interest and administrative fees payable with respect to the L Building Project. The Special Assessments shall be assessed against the Property commencing in tax year 2021 for collection in 2022 and shall continue through tax year 2045 for collection in 2046; provided, however, if the proceedings relating to the Special Assessments are completed at such time that the County Fiscal Officer of Cuyahoga County, Ohio determines that collections shall not commence in 2022, then the collection schedule may be deferred by one year. In addition to the Special Assessments, the County Fiscal Officer of Cuyahoga County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount, if imposed, will be added to the Special Assessments by the County Fiscal Officer of Cuyahoga County, Ohio.

Each of the K Building Project Site and the L Building Project Site, as of the date of this Ordinance, constitute a portion of a single tax parcel in the records of the Cuyahoga County Fiscal Officer. As provided in the Petitions, if, after the date of this Ordinance, the tax parcel is subdivided such that either or both of the Project Sites are situated on one or more new or additional tax parcels, all of the Special Assessments levied on either such Project Site shall be allocated to the resulting tax parcels containing a portion of the applicable Project Site, and the special assessments allocated to those tax parcels shall be allocated among those tax parcels in proportion to the building square footage on any such resulting tax parcel.

SECTION 4. That the estimated Special Assessments for costs of the each of Projects prepared and filed in the office of the Clerk of this Council and in the office of the Director of Finance, in accordance with the Resolution of Necessity, are adopted.

SECTION 5. That in compliance with Ohio Revised Code Section 319.61, the Clerk of Council is directed to deliver a certified copy of this Ordinance to the County Fiscal Officer of Cuyahoga County, Ohio within 15 days after the date of its passage.

SECTION 6. That all contracts for the construction of the Projects will be let in accordance with the Petitions and the Program Plan, and the costs of the Projects shall be financed as provided in the Resolution of Necessity.

SECTION 7. That this legislative authority hereby finds and determines that all formal actions taken relative to the passage of this Resolution were taken in an open meeting of this legislative authority, and that all deliberations of this legislative authority and of its committees, if any, which resulted in formal action were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code, as modified by Am. Sub. H.B. 97 of the 133rd Ohio General Assembly, effective March 27, 2020.

SECTION 8. That pursuant to Section 12(a) of Article IV of the Charter of the City of Fairview Park, Ohio, this Ordinance provides for improvements petitioned for by the owners of a majority of the front footage of property to be benefited and specially assessed therefor and is effective at the earliest possible time allowed therein.

PASSED:
APPROVED:

1st reading:
2nd reading:
3rd reading:

Michael P. Kilbane, President of Council

Patrick J. Cooney, Mayor

Liz L. Westbrooks, Clerk of Council

CERTIFICATE

The undersigned Clerk of this Council hereby certifies that the foregoing is a true copy of Ordinance _____ duly adopted by the Council of the City of Fairview Park, Ohio on _____, 2020, and that a true copy of such Ordinance was certified to the County Fiscal Officer of Cuyahoga County, Ohio within 15 days after its passage.

Clerk of the Council

RECEIPT OF COUNTY FISCAL OFFICER FOR
LEGISLATION DETERMINING TO
PROCEED WITH ACQUISITION, INSTALLATION,
EQUIPMENT, AND IMPROVEMENT OF CERTAIN PUBLIC
IMPROVEMENTS IN THE CITY OF FAIRVIEW PARK, OHIO
IN COOPERATION WITH THE NORTHEAST OHIO
ADVANCED ENERGY DISTRICT

I, Michael W. Chambers, CPA, the duly elected, qualified, and acting Fiscal Officer in and for Cuyahoga County, Ohio hereby certify that a certified copy of Ordinance No. _____ duly passed by the Council of the City of Fairview Park, Ohio on _____, 2020, determining to proceed with the acquisition, installation, equipment, and improvement of certain public improvements in the City of Fairview Park, Ohio in cooperation with the Northeast Ohio Advanced Energy District, was filed in this office on _____, 2020.

WITNESS my hand and official seal at Cleveland, Ohio on _____, 2020.

[SEAL]

Fiscal Officer
Cuyahoga County, Ohio

CITY OF FAIRVIEW PARK

RESOLUTION NO. 20-

REQUESTED BY: MARY KAY COSTELLO, DIRECTOR OF PUBLIC SERVICE &
DEVELOPMENT

SPONSORED BY: COUNCILWOMAN KING

CO-SPONSORED BY: COUNCILMAN MINEK

AN ORDINANCE TO LEVY SPECIAL ASSESSMENTS FOR THE PURPOSE OF ACQUIRING, INSTALLING, EQUIPPING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF FAIRVIEW PARK, OHIO IN COOPERATION WITH THE NORTHEAST OHIO ADVANCED ENERGY DISTRICT; AND AUTHORIZING TWO ENERGY PROJECT COOPERATIVE AGREEMENTS AND TWO SPECIAL ASSESSMENT AGREEMENTS (21000 BROOKPARK ROAD PROJECTS)

WHEREAS, 21000 Brookpark Landlord LLC (together with its successors, the “K Building Owner”) has submitted its *Petition to Add Territory to the Northeast Ohio Advanced Energy District and for Special Energy Improvement Project* (the “K Building Petition”) in order to provide for the completion of a special energy improvement project on real property owned by the K Building Owner in the City of Fairview Park, Ohio (the “City”), and 21000 Brookpark Landlord LLC (together with its successors, the “L Building Owner,” and together with the K Building Owner, the “Owners”) has submitted its *Petition to Add Territory to the Northeast Ohio Advanced Energy District and for Special Energy Improvement Project* (the “L Building Petition,” and together with the K Building Petition, the “Petitions”) in order to provide for the completion of a special energy improvement project on real property owned by the L Building Owner in the City; and

WHEREAS, this Council duly passed Resolution No. _____ on _____, 2020 (the “Resolution of Necessity”), which approved the Petitions and added the Owners’ property, subject to the Petitions, to the Northeast Ohio Advanced Energy District (the “District”) and declared the necessity of acquiring, installing, equipping the Projects, constituting special energy improvement projects, as described in the Resolution of Necessity and as set forth in the Petitions requesting those improvements; and

WHEREAS, this Council duly adopted Ordinance No. _____ on _____, 2020 and determined to proceed with the Projects and adopted the estimated Special Assessments (as defined in the Resolution of Necessity) filed with the Clerk of this Council and the Director of Finance pursuant to the Resolution of Necessity; and

WHEREAS, the City intends to enter into an Energy Project Cooperative Agreement (the “K Building Energy Project Cooperative Agreement”) with the District, the K Building Owner, and PACE Equity LLC (together with its affiliates, the “Investor”) to provide for, among other things, (i) the making of the Project Advance (as defined in the K Building Energy Project Cooperative Agreement) to pay costs of the K Building Project, (ii) the disbursement of the Project Advance for the acquisition, installation, equipment, and improvement of the K Building Project and the transfer of the Special Assessments by the City to the Investor to pay principal and interest and other costs relating to the Project Advance; and

WHEREAS, the City intends to enter into an Energy Project Cooperative Agreement (the “L Building Energy Project Cooperative Agreement,” and together with the K Building Energy Project Cooperative Agreement, the “Energy Project Cooperative Agreements”) with the District, the L Building Owner, and the Investor to provide for, among other things, (i) the making of the Project Advance (as defined in the L Building Energy Project Cooperative Agreement) to pay costs of the L Building Project, (ii) the disbursement of the Project Advance for the acquisition, installation, equipment, and improvement of the L Building Project and the transfer of the Special Assessments by the City to the Investor to pay principal and interest and other costs relating to the Project Advance

WHEREAS, to provide for the security for the Project Advances and for the administration of payments on the Project Advances and related matters, the City intends to enter into a Special Assessment Agreement with the County Treasurer of Cuyahoga County, Ohio (the “County Treasurer”), the District, the K Building Owner, and the Investor and a Special Assessment Agreement with the County Treasurer, the District, the K Building Owner, and the Investor (collectively, the “Special Assessment Agreements”); and

WHEREAS, the actual costs of the Projects have been ascertained and have been certified to the City in the Petitions for the Projects.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FAIRVIEW PARK, COUNTY OF CUYAHOGA AND STATE OF OHIO:

SECTION 1. That each capitalized term not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Resolution of Necessity.

SECTION 2. That the list of Special Assessments to be levied and assessed on the K Building Project Site (as further described on Exhibit “A”) in an amount sufficient to pay the costs of the K Building Project, which is \$10,805,575, including other related financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to pay costs of the K Building Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and District administrative fees and expenses, which costs were set forth in the K Building Petition and previously reported to this Council and are now on file in the offices of the Clerk of Council and the Director of Finance, is adopted and confirmed, and that the Special Assessments are levied and assessed on the K Building Project Site. The interest portion of the Special Assessments, which shall accrue at the annual rate of 5.90%, together with amounts used to pay administrative expenses, has been determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds been issued by the District.

The Special Assessments are assessed against the K Building Project Site commencing in tax year 2021 for collection in 2022 and shall continue through tax year 2045 for collection in 2046; provided, however, if the proceedings relating to the Special Assessments are completed at such time that the County Fiscal Officer of Cuyahoga County, Ohio determines that collections

shall not commence in 2022, then the collection schedule may be deferred by one year. The semi-annual installment of the Special Assessments shall be collected in each calendar year equal to a maximum semi-annual amount of Special Assessments as shown in Exhibit “A”₂ attached hereto and incorporated into this Ordinance.

That the list of Special Assessments to be levied and assessed on the L Building Project Site (as further described on Exhibit “A”) in an amount sufficient to pay the costs of the L Building Project, which is \$5,840,100, including other related financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to pay costs of the L Building Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and District administrative fees and expenses, which costs were set forth in the L Building Petition and previously reported to this Council and are now on file in the offices of the Clerk of Council and the Director of Finance, is adopted and confirmed, and that the Special Assessments are levied and assessed on the L Building Project Site. The interest portion of the Special Assessments, which shall accrue at the annual rate of 6.05%, together with amounts used to pay administrative expenses, has been determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds been issued by the District.

The Special Assessments are assessed against the L Building Project Site commencing in tax year 2021 for collection in 2022 and shall continue through tax year 2045 for collection in 2046; provided, however, if the proceedings relating to the Special Assessments are completed at such time that the County Fiscal Officer of Cuyahoga County, Ohio determines that collections shall not commence in 2022, then the collection schedule may be deferred by one year. The semi-annual installment of the Special Assessments shall be collected in each calendar year equal to a maximum semi-annual amount of Special Assessments as shown in Exhibit “A”₂ attached hereto and incorporated into this Ordinance.

All Special Assessments shall be certified by the Finance Director to the County Fiscal Officer pursuant to the Petition and Ohio Revised Code Chapter 727.33 to be placed on the tax list and duplicate and collected with and in the same manner as real property taxes are collected and as set forth in the Petition.

The Special Assessments shall be allocated among the parcels constituting the Project Sites as set forth in the Petitions and the List of Special Assessments attached hereto as Exhibit “A” and incorporated herein. Each of the K Building Project Site and the L Building Project Site, as of the date of this Ordinance, constitute a portion of a single tax parcel in the records of the Cuyahoga County Fiscal Officer. As provided in the Petitions, if, after the date of this Ordinance, the tax parcel is subdivided such that either or both of the Project Sites are situated on one or more new or additional tax parcels, all of the Special Assessments levied on either such Project Site shall be allocated to the resulting tax parcels containing a portion of the applicable Project Site, and the special assessments allocated to those tax parcels shall be allocated among those tax parcels in proportion to the building square footage on any such resulting tax parcel.

SECTION 3. That this Council finds and determines that the Special Assessments are in proportion to the special benefits received by each of the Project Sites as set forth in the Petitions and are not in excess of any applicable statutory limitation.

SECTION 4. That each of the Owners have waived their right to pay the Special Assessments in cash, and all Special Assessments and installments of the Special Assessments shall be certified by the Director of Finance to the County Fiscal Officer of Cuyahoga County, Ohio as provided by the Petitions and Ohio Revised Code Section 727.33 to be placed on the tax list and duplicate and collected with and in the same manner as real property taxes are collected and as set forth in the Petitions.

SECTION 5. That the Special Assessments will be used by the City to pay the cost of the Projects in cooperation with the District in any manner, including assigning the Special Assessments actually received by the City to the District or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

SECTION 6. That the Director of Finance shall keep the Special Assessments on file in the Office of the Director of Finance.

SECTION 7. That this Council hereby approves the Energy Project Cooperative Agreements, copies of which are on file in the office of the Clerk of this Council. The Mayor, the Director of Public Service and Development, or either of them individually, is authorized to sign and deliver, in the name and on behalf of the City, the Energy Project Cooperative Agreements, in substantially the forms as are now on file with the Clerk of this Council. The Energy Project Cooperative Agreements are approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved the Mayor, the Director of Public Service and Development, or either of them individually, for and on behalf of the City, all of which shall be conclusively evidenced by the signing of the Energy Project Cooperative Agreements or amendments to the Energy Project Cooperative Agreements.

SECTION 8. That this Council hereby approves the Special Assessment Agreements copies of which are on file in the office of the Clerk of this Council. The Mayor, the Director of Public Service and Development, or either of them individually, is authorized to sign and deliver, in the name and on behalf of the City, the Special Assessment Agreements, in substantially the forms as are now on file with the Clerk of this Council. The Special Assessment Agreements are approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Mayor, the Director of Public Service and Development, or either of them individually, all of which shall be conclusively evidenced by the signing of the Special Assessment Agreements or amendments to the Special Assessment Agreements.

SECTION 9. That the City is hereby authorized to enter into such other agreements that are not inconsistent with the Resolution of Necessity and this Ordinance and that are approved by the Mayor, the Director of Public Service and Development, or either of them individually, for and on behalf of the City, all of which shall be conclusively evidenced by the signing of such agreements or any amendments to such agreements.

SECTION 10. That in compliance with Ohio Revised Code Section 319.61, the Clerk of this Council is directed to deliver a certified copy of this Ordinance to the County Fiscal Officer of Cuyahoga County, Ohio within 20 days after its passage.

SECTION 11. That this legislative authority hereby finds and determines that all formal actions taken relative to the passage of this Resolution were taken in an open meeting of this legislative authority, and that all deliberations of this legislative authority and of its committees, if any, which resulted in formal action were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code, as modified by Am. Sub. H.B. 97 of the 133rd Ohio General Assembly, effective March 27, 2020.

SECTION 12. That pursuant to Section 12(a) of Article IV of the Charter of the City of Fairview Park, Ohio, this Ordinance provides for improvements petitioned for by the owners of a majority of the front footage of property to be benefited and specially assessed therefor and is effective at the earliest possible time allowed therein.

PASSED:
APPROVED:

1st reading:
2nd reading:
3rd reading:

Michael P. Kilbane, President of Council

Patrick J. Cooney, Mayor

Liz L. Westbrooks, Clerk of Council

CERTIFICATE

The undersigned Clerk of this Council hereby certifies that the foregoing is a true copy of Ordinance ____ duly adopted by the Council of the City of Fairview Park, Ohio on _____, 2020, and that a true copy of such Ordinance was certified to the County Fiscal Officer of Cuyahoga County, Ohio within 20 days after its passage.

Clerk of the Council

EXHIBIT A

**LIST OF SPECIAL ASSESSMENTS AND
SCHEDULE OF SPECIAL ASSESSMENTS**

**LIST OF SPECIAL ASSESSMENTS
K BUILDING PROJECT**

<u>Name</u>	<u>Assessed Properties Description</u>	<u>Portion of Benefit and Special Assessment</u>	<u>Amount of Special Assessments</u>
21000 Brookpark Landlord LLC	331-35-002	100%	\$10,805,575

**LIST OF SPECIAL ASSESSMENTS
L BUILDING PROJECT**

<u>Name</u>	<u>Assessed Properties Description</u>	<u>Portion of Benefit and Special Assessment</u>	<u>Amount of Special Assessments</u>
21000 Brookpark Landlord LLC	331-35-002	100%	\$5,840,100

**K BUILDING PROJECT
SCHEDULE OF SPECIAL ASSESSMENTS
FOR CUYAHOGA COUNTY PARCEL NOS.:**

331-35-002¹

The following schedule of Special Assessment charges shall be certified for collection in 50 semi-annual installments to be collected with first-half and second-half real property taxes in calendar years 2022 through 2046:

Special Assessment Payment Date ²	Total Special Assessment Installment Amount ³
January 31, 2022	\$216,111.50
July 20, 2022	216,111.50
January 31, 2023	216,111.50
July 20, 2023	216,111.50
January 31, 2024	216,111.50
July 20, 2024	216,111.50
January 31, 2025	216,111.50
July 20, 2025	216,111.50
January 31, 2026	216,111.50
July 20, 2026	216,111.50
January 31, 2027	216,111.50
July 20, 2027	216,111.50
January 31, 2028	216,111.50
July 20, 2028	216,111.50
January 31, 2029	216,111.50
July 20, 2029	216,111.50
January 31, 2030	216,111.50
July 20, 2030	216,111.50
January 31, 2031	216,111.50
July 20, 2031	216,111.50
January 31, 2032	216,111.50
July 20, 2032	216,111.50
January 31, 2033	216,111.50
July 20, 2033	216,111.50

¹ As identified in the records of the County Fiscal Officer of Cuyahoga County, Ohio as of August 7, 2020.

² Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified above are subject to adjustment under certain conditions.

³ Under Ohio Revised Code Chapter 727 the County Fiscal Officer of Cuyahoga County, Ohio may add a special assessment collection fee to the amounts stated above, which fee will be collected and retained by the County Fiscal Officer.

January 31, 2034	216,111.50
July 20, 2034	216,111.50
January 31, 2035	216,111.50
July 20, 2035	216,111.50
January 31, 2036	216,111.50
July 20, 2036	216,111.50
January 31, 2037	216,111.50
July 20, 2037	216,111.50
January 31, 2038	216,111.50
July 20, 2038	216,111.50
January 31, 2039	216,111.50
July 20, 2039	216,111.50
January 31, 2040	216,111.50
July 20, 2040	216,111.50
January 31, 2041	216,111.50
July 20, 2041	216,111.50
January 31, 2042	216,111.50
July 20, 2042	216,111.50
January 31, 2043	216,111.50
July 20, 2043	216,111.50
January 31, 2044	216,111.50
July 20, 2044	216,111.50
January 31, 2045	216,111.50
July 20, 2045	216,111.50
January 31, 2046	216,111.50
July 20, 2046	216,111.50

**L BUILDING PROJECT
SCHEDULE OF SPECIAL ASSESSMENTS
FOR CUYAHOGA COUNTY PARCEL NOS.:**

331-35-002⁴

The following schedule of Special Assessment charges shall be certified for collection in 50 semi-annual installments to be collected with first-half and second-half real property taxes in calendar years 2022 through 2046:

Special Assessment Payment Date ⁵	Total Special Assessment Installment Amount ⁶
January 31, 2022	\$116,802.00
July 20, 2022	116,802.00
January 31, 2023	116,802.00
July 20, 2023	116,802.00
January 31, 2024	116,802.00
July 20, 2024	116,802.00
January 31, 2025	116,802.00
July 20, 2025	116,802.00
January 31, 2026	116,802.00
July 20, 2026	116,802.00
January 31, 2027	116,802.00
July 20, 2027	116,802.00
January 31, 2028	116,802.00
July 20, 2028	116,802.00
January 31, 2029	116,802.00
July 20, 2029	116,802.00
January 31, 2030	116,802.00
July 20, 2030	116,802.00
January 31, 2031	116,802.00
July 20, 2031	116,802.00
January 31, 2032	116,802.00
July 20, 2032	116,802.00
January 31, 2033	116,802.00
July 20, 2033	116,802.00

⁴ As identified in the records of the County Fiscal Officer of Cuyahoga County, Ohio as of August 7, 2020.

⁵ Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified above are subject to adjustment under certain conditions.

⁶ Under Ohio Revised Code Chapter 727 the County Fiscal Officer of Cuyahoga County, Ohio may add a special assessment collection fee to the amounts stated above, which fee will be collected and retained by the County Fiscal Officer.

January 31, 2034	116,802.00
July 20, 2034	116,802.00
January 31, 2035	116,802.00
July 20, 2035	116,802.00
January 31, 2036	116,802.00
July 20, 2036	116,802.00
January 31, 2037	116,802.00
July 20, 2037	116,802.00
January 31, 2038	116,802.00
July 20, 2038	116,802.00
January 31, 2039	116,802.00
July 20, 2039	116,802.00
January 31, 2040	116,802.00
July 20, 2040	116,802.00
January 31, 2041	116,802.00
July 20, 2041	116,802.00
January 31, 2042	116,802.00
July 20, 2042	116,802.00
January 31, 2043	116,802.00
July 20, 2043	116,802.00
January 31, 2044	116,802.00
July 20, 2044	116,802.00
January 31, 2045	116,802.00
July 20, 2045	116,802.00
January 31, 2046	116,802.00
July 20, 2046	116,802.00

RECEIPT OF COUNTY AUDITOR FOR
LEGISLATION LEVYING SPECIAL ASSESSMENTS
FOR THE PURPOSE OF ACQUIRING, INSTALLING, EQUIPPING,
AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS
IN THE CITY OF FAIRVIEW PARK, OHIO IN COOPERATION WITH
THE NORTHEAST OHIO ADVANCED ENERGY DISTRICT

I, Michael W. Chambers, CPA, the duly elected, qualified, and acting Fiscal Officer in and for Cuyahoga County, Ohio hereby certify that a certified copy of Ordinance _____, duly adopted by the Council of the City of Fairview Park, Ohio on _____, 2020 levying special assessments for the purpose of acquiring, installing, equipping, and improving certain public improvements in the City of Fairview Park, Ohio in cooperation with the Northeast Ohio Advanced Energy District, including the List of Special Assessments and Schedule of Special Assessments, which Special Assessment charges shall be certified for collection in 50 semi-annual installments to be collected with first-half and second-half real property taxes in calendar years 2022 through 2046, was filed in this office on _____, 2020.

WITNESS my hand and official seal at Cleveland, Ohio on _____, 2020.

[SEAL]

Fiscal Officer
Cuyahoga County, Ohio

ENERGY PROJECT COOPERATIVE AGREEMENT

By and among

CITY OF BEDFORD, OHIO, CITY OF BEDFORD HEIGHTS, OHIO, CITY OF BEREA, OHIO, CITY OF BROOK PARK, OHIO, CITY OF BROOKLYN, OHIO, CITY OF CLEVELAND, OHIO, CITY OF CLEVELAND HEIGHTS, OHIO, CITY OF EAST CLEVELAND, OHIO, CITY OF EUCLID, OHIO, CITY OF FAIRVIEW, OHIO, CITY OF GARFIELD HEIGHTS, OHIO, CITY OF LAKEWOOD, OHIO, CITY OF MAPLE HEIGHTS, OHIO, CITY OF PARMA, OHIO, CITY OF PARMA HEIGHTS, OHIO, CITY OF SHAKER HEIGHTS, OHIO, CITY OF SOLON, OHIO, CITY OF SOUTH EUCLID, OHIO, CITY OF UNIVERSITY HEIGHTS, OHIO ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:
NORTHEAST OHIO ADVANCED ENERGY DISTRICT;

21000 BROOKPARK LANDLORD LLC;

PACE EQUITY LLC; and

CITY OF FAIRVIEW PARK, OHIO

Dated as of [____], 2020

BRICKER & ECKLER LLP

ENERGY PROJECT COOPERATIVE AGREEMENT

THIS ENERGY PROJECT COOPERATIVE AGREEMENT (the “Agreement”) is made and entered into as of [____], 2020, between the CITY OF BEDFORD, OHIO, CITY OF BEDFORD HEIGHTS, OHIO, CITY OF BEREA, OHIO, CITY OF BROOK PARK, OHIO, CITY OF BROOKLYN, OHIO, CITY OF CLEVELAND, OHIO, CITY OF CLEVELAND HEIGHTS, OHIO, CITY OF EAST CLEVELAND, OHIO, CITY OF EUCLID, OHIO, CITY OF FAIRVIEW, OHIO, CITY OF GARFIELD HEIGHTS, OHIO, CITY OF LAKEWOOD, OHIO, CITY OF MAPLE HEIGHTS, OHIO, CITY OF PARMA, OHIO, CITY OF PARMA HEIGHTS, OHIO, CITY OF SHAKER HEIGHTS, OHIO, CITY OF SOLON, OHIO, CITY OF SOUTH EUCLID, OHIO, CITY OF UNIVERSITY HEIGHTS, OHIO ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., doing business under the registered trade name NORTHEAST OHIO ADVANCED ENERGY DISTRICT, a nonprofit corporation and special improvement district duly organized and validly existing under the laws of the State of Ohio (the “State”) (the “ESID”), 21000 BROOKPARK LANDLORD LLC, a limited liability company duly organized and validly existing under the laws of the State of Ohio (the “State”) (the “Owner”), PACE EQUITY LLC, a limited liability duly organized and validly existing under the laws of the State of Wisconsin (the “Investor”), and the CITY OF FAIRVIEW PARK, OHIO, a municipal corporation duly organized and validly existing under the constitution and laws of the State (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. On [___], 2020, the Council of the City (“City Council”) passed Ordinance No. [___]-20, which approved the Petition to Add Territory to the Northeast Ohio Advanced Energy District and for Special Energy Improvement Project (the “Petition”) and the Articles of Incorporation of the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of East Cleveland, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc.

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 [___], 2020, by its Ordinance No. [___]-20, the City Council further approved the Plan, as a plan for public improvements or public services for the ESID under Ohio Revised Code Chapter 1710.02(F).

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 Plan.

F. The ESID, the Owner, the Investor, 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, installation, equipment, and improvement of energy special improvement projects and to further the public purposes set forth above is through this Agreement, pursuant to the Special Assessment Act and on the terms set forth in this Agreement, with (i) the Investor providing the Project Advance to finance the costs of the special energy improvement projects described in the Plan, (ii) the ESID and the Owner cooperating to acquire, install, equip and improve special energy improvement projects, (iii) the Owner agreeing to make Special Assessment payments 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 Investor to repay the Project Advance; and (v) the ESID agreeing to assign, transfer, and set over to the Investor 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 be 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 Investor, 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 Special Assessment 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 Investor. The Owner and the ESID have requested the assistance of the Investor 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 Investor 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, installation, equipment, and improvement 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 Investor, 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 Investor, to pay the costs of the Project at the times and in the manner provided in this Agreement; provided, however, that the City, the ESID, and the Investor 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 Investor. The City, the ESID, and the Investor further intend and agree that the Investor shall pay to the ESID, out of the Special Assessments received by the Investor, a semi-annual fee of \$[_____] for the ESID’s administrative expenses; provided, however, that if the amount of Special Assessments received by the Investor 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 \$[_____] 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 Investor, 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 Investor 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 taken all necessary actions required by the Special Assessment Act to levy and collect the Special Assessments on the Property.

Pursuant to Ohio Revised Code Section 727.33, the City has certified the Special Assessments to the County Fiscal Officer for collection, and the County Fiscal Officer 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 Fiscal Officer 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. The ESID and the Investor 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 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 Fiscal Officer, 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 may be prepaid to the Investor by the Owner in accordance with Section 4.7 of this Agreement. 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 Investor, and, unless provided the express written consent of the Investor, 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 Investor.

- (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 Investor. If the Owner causes the Special Assessments to be prepaid in accordance with Sections 2.2(c) and 4.7 of this Agreement, upon the City's receipt of the Investor's express written consent or instruction, the City shall certify to the County Fiscal Officer, prior to the last date in the then-current tax year on which municipal corporations may certify special assessments to the County Fiscal Officer, a reduction in the amount of Special Assessments 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, the remaining outstanding principal of the Project Advance, together with interest at the annual rate of 5.90%, a \$600.00 semi-annual servicing fee to the Investor, and a \$[_____] semi-annual administrative fee to the ESID. The parties acknowledge and agree that County Fiscal Officer may calculate, charge, and collect a collection fee on each annual installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Fiscal Officer 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. 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 Investor.
- (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 Investor all of its right, title and interest in and to: (i) the Special Assessments received by the City under this Agreement, (ii) the City's special assessment funds established for the Project, and (iii) any other property received or to be received from the City under this Agreement. The City further shall transfer, set over, and pay the Special Assessments and Delinquency Amounts to the Investor in accordance with this Agreement. The ESID acknowledges and consents to the City's assignment of the Special Assessments to the Investor. The Parties agree that each of the City, the ESID, and the Investor, 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 Fiscal Officer, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings.

- (f) Transfer of Special Assessments. The parties anticipate that semi-annual installments of the Special Assessments and Delinquency Amounts will be paid to the City by the County Fiscal Officer 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 Fiscal Officer and County Treasurer will pay the Special Assessments and Delinquency Amounts to the City on or before June 1 of each year. Immediately upon receipt of any moneys received by the City as Special Assessments, but in any event not later than 21 calendar days after the receipt of such moneys and the corresponding final settlement from the County Fiscal Officer, the City shall deliver to the Investor all such moneys received by the City as Special Assessments and Delinquency Amounts by ACH or check as determined in the sole discretion of the City. The Investor shall provide the City with account and payment information in the form of **Exhibit I** on the date on which this Agreement becomes effective. The Investor may from time to time provide updated written account and payment information in the form of **Exhibit I** to the City for the payment of Special Assessments and Delinquency Amounts, but the City shall maintain its right to send the special assessments by ACH or check in its sole discretion. If at any time during the term of this Agreement the County Fiscal Officer agrees, on behalf of the City, to disburse the Special Assessments and Delinquency Amounts to the Investor pursuant to instructions or procedures agreed upon by the County Fiscal Officer and the City, then, upon each transfer of an installment of the Special Assessments and Delinquency Amounts from the County Fiscal Officer to the Investor, the City shall be deemed to have satisfied all of its obligations under this Agreement to transfer that installment of the Special Assessments and Delinquency Amounts to the Investor.
- (g) Repayment of Project Advance. The Investor 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 Investor, on the dates shown on the Repayment Schedule, further shall pay to the ESID, after the payment of accrued interest on the Project Advance, the repayment of the portion of principal of the Project Advance scheduled to be repaid on such date, and the payment of a \$600.00 semi-annual servicing fee to the Investor, a semi-annual fee of \$[_____] 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 Fiscal Officer 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 Fiscal Officer with the Special Assessments, and that the County Fiscal Officer will retain such fee.

Section 2.3. Obligations Unconditional; Place of Payments. The City's obligation to transfer the Special Assessments and any Delinquency Amounts to the Investor 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 Investor, the ESID, or the Owner; provided, however, that the City's obligation to transfer the Special Assessments and any Delinquency Amounts is limited to the Special Assessments and any Delinquency Amounts 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 and Delinquency Amounts 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 Investor all Special Assessments and Delinquency Amounts 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 and Delinquency Amounts 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 the City's obligation under this Agreement to pay to the Investor all Special Assessments and Delinquency Amounts 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 and Delinquency Amounts 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 has no obligation to use or apply to the payment of the Special Assessments and Delinquency Amounts any funds or revenues from any source other than the moneys received by the City as Special Assessments and Delinquency Amounts; provided, however, that nothing in this Agreement shall be deemed to prohibit the City from using, to the extent that it is authorized to do so, any other resources for the fulfillment of any of this Agreement's terms, conditions, or obligations.

Section 2.5. Security for Advanced Funds. To secure the transfer of the Special Assessments by the City to the Investor, and in accordance with the Special Assessment Act, 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 Investor. 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 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 City 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 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.
- (d) It, by proper action, duly has 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.
- (e) There is no litigation pending, or to its knowledge 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.
- (f) 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 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. The Owner's Representations and Warranties. 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 of Ohio. 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 Investor of any Action commenced or to its knowledge threatened against it.
- (d) It is not in default under this Agreement, and 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 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 its 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, installing, equipping and improving of its 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 Investor 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 Investor, 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 Investor in writing, and the financial statements which have been delivered to the Investor 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 Investor 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, environmental 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.
- (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 Investor, in accordance with the distribution priority specified in Section 4.3.

- (l) Each Disbursement Request Form presented to the Investor, 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 Investor in writing.
- (n) The Project and the plans and specifications for the Project have been developed pursuant to an energy audit prepared by the Investor, which energy audit demonstrates that the Project is expected to generate \$[12,879.00] in average 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 shall take any and all action necessary to remain in compliance with the Special Assessment Act.

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 Investor; 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 Investor, 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 H**; (ii) execute, cause the transferee or purchaser to execute, and deliver to the Investor, an assignment of all construction contracts related to the Project; and (iii) pay all legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel. 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 Investor, 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.
- (c) It shall not, without the prior written consent of the Investor, 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, installation, equipment, and improvement of the Project.
- (e) Once annually until the Completion Date, the chief financial officer of the Owner shall provide the Investor with a certificate setting forth all sources and uses of funds with respect to the Project.
- (f) It promptly shall notify the Investor of any material damage or destruction to the Project.
- (g) Upon the reasonable request of the Investor, 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.
- (h) It shall not cause the Property to be subdivided, platted, or otherwise separated into any additional parcels in the records of the County Fiscal Officer without the consent of the Investor. In the event that at any time following the Closing Date the Property is combined or subdivided into permanent parcels in the records of the County Fiscal Officer, then the Special Assessments shall be allocated among the resulting parcels in proportion to the improved building square footage of the existing parcels that is contained in each resulting parcel that contains a portion of an existing parcel. The Owner hereby certifies, represents, and warrants to the ESID, the Investor, and the City that in the event of a combination or subdivision

of parcels, the portion of the Special Assessments allocated to each resulting parcel as described above will be in proportion to, and will not exceed, the special benefits to be conferred on the resulting parcel or parcels by the Project.

- (i) 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 Investor. 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. There is no environmental remediation required (or anticipated to be required) with respect to the Property. The Owner does not know of, and has not received, any written or oral 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.

ARTICLE IV: PROJECT ADVANCE; CONSTRUCTION OF PROJECT; REPAYMENT

Section 4.1. Project Advance. The Investor has made available to the Owner the Project Advance in the amount of \$5,569,278.00, of which \$[_____] will be net funded into the Project Account (as defined below) for disbursement pursuant to Section 4.2, closing costs in the amount of \$[_____] will be disbursed by the Investor in accordance with Section 4.2 and **Exhibit E**, and capitalized interest in the amount of \$[_____] will be retained for the account of the Investor for further payment to itself and the EISD in accordance with this Agreement. The Disbursing Agent shall hold the Project Advance in a segregated account established in the custody of the Investor, which account shall be referred to as the “Project Account.” Subject to the terms and conditions of this Agreement, the Disbursing Agent, upon the direction of the Owner, shall cause the Disbursing Agent to 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.

If the Project Advance net funded to the Owner is insufficient to pay the costs of the Project pursuant to this Agreement, the Owner, nevertheless, shall complete the acquisition, installation, equipment, and improvement of its Project, and the Owner shall pay all such additional costs of its Project from its own funds. The Owner shall not be entitled to reimbursement for any such additional costs of its Project, nor shall it be entitled to any abatement, diminution, or postponement 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 Disbursement Request Forms (a form of which is attached to this Agreement as **Exhibit C**) to the

Investor, which Disbursement Request Forms each shall, in part, set forth the payments or reimbursements requested, and shall be accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested. In addition, the following shall occur:

- (a) With each Disbursement Request Form:
 - (i) The Owner shall deliver to the Investor proof that each project milestone has occurred;
 - (ii) The Owner shall deliver to the Investor copies of all related receipts and invoices;
 - (iii) The Owner shall deliver to the Investor signed lien waivers in the form attached to the Disbursement Request Form as Schedule 2;
 - (iv) The Owner shall deliver to the Disbursing Agent, on behalf of the Investor, as necessary, bank information for wiring the amounts requested for disbursement;
 - (v) The Investor shall have received copies of all other disbursement requests for disbursements of other sources of funds, including from the loan from the Owner's Lender, that have been submitted on or prior to the date on which the related Disbursement Request is submitted, and all such disbursement requests shall have been validly approved in accordance with the Lender Loan Documents; and
 - (vi) All of the conditions to disbursement under the Disbursing Agreement shall have been satisfied.

- (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 Investor copies of all construction permits required for the construction of the Project;
 - (ii) The Owner shall deliver to the Investor copies of all agreements with all subcontractors performing work or furnishing materials for the Project;
 - (iii) The Owner shall deliver to the Investor 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 Investor 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 Investor in its sole discretion;
 - (vi) The budget shall have been approved by the Investor in its sole discretion;
 - (vii) The Owner shall deliver to the Investor 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 G**;
 - (viii) The Owner shall provide to the Investor evidence acceptable to the Investor, in its sole discretion, that the City Council and the ESID have approved the Project;

- (ix) The Investor shall receive the executed Special Assessment Agreement and Owner Consent and evidence that the same has been recorded in the records of the Fiscal Officer of Cuyahoga County, Ohio with respect to the Property;
 - (x) The Owner and the ESID shall provide to the Investor original executed copies of this Agreement and any related certificates;
 - (xi) The Owner shall provide to the Investor a list of authorized representatives on whose instructions and directions the Investor may rely until such time as an updated list has been provided, as set forward in **Exhibit I**, attached hereto.
- (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 Investor the final lien waiver and release;
 - (ii) The Owner shall deliver to the Investor the executed certificate in the form attached as **Exhibit D** to this Agreement; and
 - (iii) The Owner shall deliver to the Investor copies of all completion inspections and closed permits with respect to the Project.

Upon its receipt of each completed Disbursement Request Form, the Investor shall approve all or a portion of the payment or reimbursements requested to be disbursed from the Project Account. To the extent the Investor approves the payment or reimbursements requested to be disbursed from the Project Account, the Investor shall cause the Disbursing Agent to 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 Investor.

Additionally, on the date this Agreement becomes effective, the Investor shall cause the Disbursing Agent to disburse to the ESID for closing costs related to the financing described in this Agreement in an amount not to exceed \$[_____], as detailed in **Exhibit E** to this Agreement. Without limiting the generality of the foregoing, disbursements made pursuant to this paragraph may be for fees to the Investor, fees to the ESID, legal fees, fees to the City, and other closing costs or contingencies.

If at any time an Event of Default has occurred and is continuing under this Agreement, the Investor may withhold approval of any requests for disbursement until the Event of Default is cured and its effects are removed.

Notwithstanding the foregoing, upon the Investor's receipt from the Owner's Lender of notice of a default under the Lender Loan Documents beyond the expiration of any applicable notice and cure period, the Owner shall forfeit all rights under this Agreement to the Lender (including, without limitation, any rights to disbursements), and the Lender shall be entitled to all of the rights of the Owner under this Agreement. So long as the Owner's Lender has cured (or caused the cure of) any Event of Default under this Agreement, or, if any Event of Default is not curable by the Lender, the Lender has agreed to complete construction of the Project notwithstanding the Event of Default under this Agreement, then disbursements shall be made available to the Lender in accordance with this Agreement and the Disbursing Agreement. In such event, the Owner hereby irrevocably makes, constitutes, and appoints the Owner's Lender as the

Owner's true and lawful attorney and agent-in-fact to execute all documents and other agreements and instruments and do such other acts and things as may be necessary to preserve and perfect its interests and rights under this Agreement. The Owner acknowledges and agrees that its appointment of the Lender as its attorney and agent-in-fact for the purposes specified in this Section is an appointment coupled with an interest and shall be irrevocable until all of the obligations under the Lender Loan Documents are satisfied. Nothing contained in this Section shall obligate the Lender to perform any obligations on behalf of the Owner (including, without limitation, the obligation to complete the Project).

Section 4.3. Casualties and Takings. The Owner shall promptly notify the Investor 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 to the Owner's Lender and to the Investor in accordance with their insured interests, 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 Investor shall remain obligated to cause the Disbursing Agent 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 Investor's reasonable judgment, said insurance proceeds are insufficient to complete the restoration, the Owner shall deposit with the Disbursing Agent such amounts as are necessary, in the Investor'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, provided that if the Takings proceeds are not used to restore the Property and the Project, Takings proceeds will be distributed to Owner's and to the Investor in accordance with their insured interests, and any excess Takings proceeds will be paid to the Owner. If the Lender determines not to restore the Property or the Project and release funds related thereto to the Owner, the Investor's obligation to cause the Disbursing Agent 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 Investor's reasonable judgment, the Taking proceeds available to the

Owner and the Investor are insufficient to complete the restoration, the Owner shall deposit with the Disbursing Agent such amounts as are necessary, in the Investor'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 Investor's obligation to cause the Disbursing Agent 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 Investor shall cause the Disbursing Agent to release the funds for such purpose. If, in the Investor's reasonable judgment, the Taking proceeds available to the Owner and the Investor are insufficient to complete the restoration, the Owner shall deposit with the Disbursing Agent such amounts as are necessary, in the Investor'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, installation, equipment, 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, installation, equipment, 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 Investor, which approval shall not be unreasonably withheld, shall acquire, install, equip, and improve its 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, installation, equipment, 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, installation, equipment, 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 acquisition, installation, equipment, and improvement of the Project, the ESID and the Investor, 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 Investor and their respective agents shall utilize commercially reasonable efforts to minimize interference with the tenants of the Property during any such inspection.

The Investor 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 Investor's opinion, after 30 days' written notice to the Owner, the construction is not proceeding with reasonable dispatch, the Investor may (i) request that the Owner remove and replace the general contractor with a general contractor acceptable to the Investor, 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 Investor 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, installation, equipment, 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 Investor; (c) that the Owner has complied, and will continue to comply with all applicable statutes, regulations, and resolutions or 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 Investor 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 agree that the Special Assessments have been levied and certified to the County Fiscal Officer in the amounts necessary to amortize the Project Advance, together with interest at the annual rate of 5.90%, a \$600.00 semi-annual servicing fee to the Investor, and a \$[_____] semi-annual administrative fee to the ESID over 50 semi-annual payments to be collected beginning approximately on January 31, 2022 and continuing through approximately July 20, 2046. The Parties further acknowledge that in addition to the amount of the Special Assessments and other related interest, fees, and penalties, the County Fiscal Officer may charge and collect a County Fiscal Officer collection fee on each annual installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Fiscal Officer 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. 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 Investor by the City. The Owner agrees to pay, as and when due, all Special Assessments with respect to its Property. 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 second semi-annual payment of the Special Assessment occurring in 2030 has been made, the Owner may prepay any portion of the principal of the Project Advance to the Investor by paying, in immediately available funds, 100% 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 Investor shall notify the City of the prepayment, and the Owner, the Investor, and the City shall cooperate to reduce the amount of Special Assessments to be collected by the County Fiscal Officer 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 Investor, or the City should incur expenses, including 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 Investor, 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 maximum rate allowable by law, shall constitute indebtedness under this Agreement, and the ESID, the Investor, 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 Investor, the Owner shall take any actions and execute any further documents as the Investor 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 transfer, or cause the transfer of, any of the Special Assessments to the Investor 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 five days of the receipt of notice, and, if so cured, such breach shall not constitute an Event of Default;
- (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 its Project;
- (f) The Owner commits waste upon its Property or its 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 30 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) Upon an Event of Default described in Section 5.1(a) only, the Investor shall become entitled to receive any Delinquency Amounts actually received by the City.
- (b) The ESID, the Investor, 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 Investor, 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.
- (c) 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 Investor, 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, 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

Investor. 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 Investor of such request, and it will not provide its consent pursuant to Section 2.1 of the Special Assessment Agreement without the Investor'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 Investor, 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 and the resolutions or ordinances in effect in the City (collectively, "Assessment Rights"). The Owner irrevocably waives all Assessment Rights as to its Project and consents to the imposition of the Special Assessments as to its 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 its 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 resolutions or 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 Investor, 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 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 notice and which, if adversely determined would impair materially the right or ability of the Parties to perform their 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. The Owner shall indemnify and hold harmless the ESID, the Investor, 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) imposed upon, incurred by or asserted against an Indemnified Party arising or resulting from (i) Owner's financing, acquisition, construction, installation, operation, use or maintenance of the Project, (ii) 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 (iii) (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. If at any time the Indemnified Party becomes dissatisfied, in its reasonable discretion, with the selection of counsel by the Owner, a new mutually agreeable counsel shall be retained at the expense of the Owner. 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 Investor, 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 Investor 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 Investor, 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 Investor shall not constitute the Investor’s approval or acceptance of the construction theretofore completed. The Investor’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 Investor, the sole obligation of the Investor 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 Investor without the Investor 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 deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, 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.

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, 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, or the Investor in other than his or her official capacity; and none of the members of the Board or the City Council, nor any official of the ESID, the Owner, the City, or the Investor 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, or agreements of the ESID, the Owner, the City, or the Investor 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 Investor, and only upon (i) the execution and delivery to the City, the Investor, 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 H**; (ii) the execution and delivery to the Investor of an assignment of all construction contracts for the Project; and (iii) the payment by Owner of all legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel. 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, and the Owner Consent shall be obligations of the assignee, and the assigning Owner shall be released of its obligations to a corresponding extent.

Notwithstanding anything in this Agreement to the contrary, the Investor 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, an “Investor 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 Investor shall 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 Investor Assignee shall be a party to this Agreement and shall have all of the rights and obligations of the Investor 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 Investor pursuant to the assignment documentation between the Investor and such Investor Assignee, and the Investor 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 Investor assigns any of the rights and obligations of the Investor under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to an Investor Assignee, the Investor shall (i) give prompt notice of such assignment to the other Parties and (ii) pay all legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel.

In addition, the Investor 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 Investor's obligation to make Project Advances under this Agreement or to any or all of the loans held by Investor under this Agreement. In the event of any such grant by the Investor of a participating interest to a Participant, whether or not upon notice to the Owner, the Investor shall remain responsible for the performance of its obligations under this Agreement, and the Owner shall continue to deal solely and directly with the Investor in connection with the Investor's rights and obligations under this Agreement. The Owner agrees that the Investor may furnish any information concerning the Owner in its possession from time to time to prospective Investor 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 Investor, the dates to which the Special Assessments have been paid to the Investor. 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 Investor 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.

[Signature pages to follow]

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.

CITY OF BEDFORD, OHIO, CITY OF BEDFORD HEIGHTS, OHIO, CITY OF BEREA, OHIO, CITY OF BROOK PARK, OHIO, CITY OF BROOKLYN, OHIO, CITY OF CLEVELAND, OHIO, CITY OF CLEVELAND HEIGHTS, OHIO, CITY OF EAST CLEVELAND, OHIO, CITY OF EUCLID, OHIO, CITY OF FAIRVIEW, OHIO, CITY OF GARFIELD HEIGHTS, OHIO, CITY OF LAKEWOOD, OHIO, CITY OF MAPLE HEIGHTS, OHIO, CITY OF PARMA, OHIO, CITY OF PARMA HEIGHTS, OHIO, CITY OF SHAKER HEIGHTS, OHIO, CITY OF SOLON, OHIO, CITY OF SOUTH EUCLID, OHIO, CITY OF UNIVERSITY HEIGHTS, OHIO ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A: NORTHEAST OHIO ADVANCED ENERGY DISTRICT, as the ESID

By: _____

Name: _____

Title: _____

21000 BROOKPARK LANDLORD LLC, as
the Owner

By: _____

Name: _____

Title: _____

[Signature Page to Energy Project Cooperative Agreement]

PACE EQUITY LLC, as the Investor

By: _____

Name: _____

Title: _____

[Signature Page to Energy Project Cooperative Agreement]

CITY OF FAIRVIEW PARK, OHIO, as the
City

By: _____

Name: _____

Title: _____

[Signature Page to Energy Project Cooperative Agreement]

CITY FISCAL OFFICER CERTIFICATE

The undersigned, Fiscal Officer of the City of Fairview Park, Ohio, hereby certifies that the moneys required to meet the obligations of the City during the year 2020 under the foregoing Energy Project Cooperative Agreement have been lawfully appropriated by the City Council of the City of Fairview Park, 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.

Fiscal Officer
City of Fairview Park, Ohio

Dated: _____, 2020

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 [____], 2020, by and between the ESID, the Owner, the Investor, 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.

“*City*” means the City of Fairview Park, Ohio.

“*City Council*” means the Council of the City of Fairview Park, Ohio.

“*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 the County of Cuyahoga, Ohio.

“*County Fiscal Officer*” means the Fiscal Officer of the County.

“*County Prosecutor*” means the Prosecuting Attorney of the County.

“*County Treasurer*” means the Treasurer of the County.

“*Delinquency Amount*” means any penalties or interest which may be due on or with respect to any installment of the Special Assessments and which are not paid or taxable to any party other than the Investor under law.

“*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.

“*Disbursing Agent*” means [Town Bank, a Wintrust Community Bank], in its capacity as “*Depository Agent*” under the Disbursement Agreement.

“*Disbursement Agreement*” means the Disbursement Agreement dated as of [____], 2020 by and among the Owner, the Investor, and PACE Equity Holdings Titling Trust, as the PACE Assignee, as the same may be validly amended or supplemented and in effect from time to time.

“*ESID*” means the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of East Cleveland, Ohio, City of Euclid, Ohio, City of Fairview,

Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc., doing business under the registered trade name Northeast Ohio Advanced Energy Improvement District, a nonprofit corporation and energy special improvement district organized under the laws of the State.

“*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.

“*Investor*” means PACE Equity LLC, a limited liability company duly organized and validly existing under the laws of the State of Wisconsin, together with any Investor Assignee.

“*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, including, initially, and without limitation, Perpetual Federal Savings Bank.

“*Lender Loan Documents*” means any loan agreement or loan agreements, mortgage or mortgages, and any other documents and instruments executed and delivered in connection with the a loan from a Lender, as they may be amended, modified, and supplemented from time to time under their terms.

“*Notice Address*” means:

- | | | |
|-----|-----------------|--|
| (a) | As to the City: | City of Fairview Park, Ohio
20777 Lorain Road
Fairview Park, Ohio 44126
Attention: _____ |
| (b) | As to the ESID: | Northeast Ohio Advanced Energy District
165 Center Road
Bedford, Ohio 44146
Attention: Jennifer Kuzma |
| | With a Copy To: | J. Caleb Bell, Esq.
Bricker & Eckler LLP
100 S. Third Street
Columbus, Ohio 43215
Phone: (614) 227-2300
Email: pace@bricker.com |
| (c) | As to the Owner | 21000 Brookpark Landlord LLC
21000 Brookpark Road |

Fairview Park, Ohio 44135

With a Copy To:

(d) As to the Investor

PACE Equity LLC
731 North Jackson, Suite 420
Milwaukee, Wisconsin 53202
Attention: Kevin Moyer

“*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 21000 Brookpark Landlord LLC, a limited liability company duly organized and validly existing under the laws of the State of Ohio, and any permitted successors or assigns.

“*Owner Consent*” means the Owner Consent dated as of [____], 2020 by the Owner and recorded in the records of the Cuyahoga County Fiscal Officer with respect to the Property.

“*PACE Counsel*” means Bricker & Eckler LLP, an Ohio limited liability partnership.

“*Parties*” means the ESID, the Owner, the Investor, and the City.

“*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 Northeast Ohio Advanced Energy Special Improvement District Commercial-Industrial Program Project Plan and the Northeast Ohio Advanced Energy Special Improvement District Commercial-Industrial Program Services Plan adopted by the City by its Ordinance No. [__]-20 of [____], 2020, and any and all future supplemental plans approved by the ESID and the City.

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

“*Project Account*” means the segregated account in the custody of the Investor 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, 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 **Exhibit B**, which schedule establishes the dates and amounts for the repayment of the Project Advance by the Special Assessments paid by the Owner.

“*Required Builder’s Risk Insurance Coverage*” means at any time insurance coverage maintained with generally recognized, responsible insurance companies qualified to do business in the State in the minimum amount of the full replacement value of the Project and Project Site, insuring the Project against loss or damage during construction and containing loss deductible provisions not to exceed \$10,000, which insurance coverage shall name the Investor as lender loss payee.

“*Required Business Interruption Insurance Coverage*” means at all times after the Completion Date, business interruption and rent loss insurance maintained with generally recognized, responsible insurance companies qualified to do business in the State in a commercially reasonable minimum amount, which insurance coverage shall name the Investor as lender loss payee.

“*Required Flood Insurance Coverage*” means, as applicable, (i) if the Property or any part of the Property is identified by the United States Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to the lesser of: (a) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Project Advances if replacement cost coverage is not available for the type of building insured); or (b) such lesser amount as may be required by the Investor, and containing a loss deductible with respect not in excess of \$10,000 per occurrence; and (ii) earthquake insurance in amounts and in form and substance satisfactory to the Investor in the event the Property is located in an area with a high degree of seismic activity, provided that the insurance pursuant to this section shall be on terms consistent with the Required Public Liability Insurance Coverage.

“*Required Insurance Coverage*” means, collectively, the Required Builder’s Risk Insurance Coverage, the Required Business Interruption Insurance Coverage, the Required Flood Insurance Coverage (if any), 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 Investor in the event of

cancellation or nonrenewal and (ii) must name as an additional insured (mortgagee/loss payee) the Investor.

“Required Property Insurance Coverage” means at any time insurance coverage evidenced on Acord 27 and maintained with generally recognized, responsible insurance companies qualified to do business in the State in the amount of (i) 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 Investor as loss payee/mortgagee.

“Required Public Liability Insurance Coverage” means at any time commercial general accident and public liability insurance coverage evidenced on Acord 25 and maintained with generally recognized, responsible insurance companies qualified to do business in the State with coverage limits in the maximum amount of \$2,000,000 per occurrence for death or bodily injury and property damage liability combined, with loss deductible provisions of not to exceed \$10,000, which insurance coverage shall name the Investor as additional insureds.

“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, Resolution No. [_____] approving the Petition and Plan and declaring the necessity of the Project passed on [_____] , 2020, Ordinance No. [_____] determining to proceed with the Project adopted on [_____] , 2020, and Ordinance No. [_____] levying the Special Assessments adopted on [_____] , 2020, all with respect to levying special assessments on real property within the ESID.

“Special Assessments” means the special assessments levied pursuant to the Special Assessment Act 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.

EXHIBIT B
REPAYMENT SCHEDULE

[Insert repayment schedule]

EXHIBIT C

DISBURSEMENT REQUEST FORM

[See Attached]

Request No. _____

Date: _____

APPLICATION FOR PAYMENT

To: PACE Equity, LLC

Under the Energy Project Cooperative Agreement dated as of [____], 2019 (the **Energy Project Cooperative Agreement**), by and among 21000 Brookpark Landlord LLC (**Owner**), PACE Equity LLC (**Investor**), the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of East Cleveland, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc., doing business under the registered trade name Northeast Ohio Advanced Energy Improvement District (the **ESID**), and the City of Fairview Park, Ohio (the **City**), and under the Escrow and Disbursement Agreement dated as of [____], 2020 (the **Disbursement Agreement**) by and among the Owner, the Investor, and PACE Equity Holdings Titling Trust, as PACE Assignee, the undersigned hereby requests the disbursement of construction funds from the Disbursement Agent in accordance with this request, and hereby certifies as follows:

1. All capitalized terms in this Application for Payment, unless otherwise defined herein, have the meanings specified in the Energy Project Cooperative Agreement.
2. The amounts requested either have been paid by the Owner, or are justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names are stated on **Attachment I** hereto and whose invoices are attached hereto) in accordance with the invoice(s) attached hereto who have performed necessary and appropriate work or furnished necessary and appropriate materials, equipment or furnishings in the acquisition, construction and installation of the Project.
3. Final lien waivers or releases executed by all parties receiving payment directly from the previous draw request through the current draw request are **attached hereto**.
4. **Attached hereto** is a completed AIA Document g702 or equivalent document, signed by the Owner's general contractor for the Project **and** a list of the applicable payees if payment will be made to an entity or entities other than the Owner's general contractor.
5. Each disbursement to the payees listed hereunder shall constitute a representation and warranty by the Owner, as of the date that such disbursement is made, that the conditions contained in Section 4.2 of the Energy Project Cooperative Agreement have been satisfied.

[Signature page follows]

21000 Brookpark Landlord LLC

Request No. _____

By: _____
Name: _____
Title: _____
Date: _____

ATTACHMENT I
TO APPLICATION FOR PAYMENT

SCHEDULE OF PAYMENTS REQUESTED

(Payments to be made in accordance with instructions on invoice attached hereto)

Payee Name	Description	Total Payment	Payment Directions

EXHIBIT D

FORM OF COMPLETION CERTIFICATE

21000 Brookpark Landlord 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 City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of East Cleveland, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc., doing business under the registered trade name Northeast Ohio Advanced Energy Improvement District, the City of Fairview Park, Ohio and PACE Equity LLC (the **Investor**) dated as of [_____], 2020 (the **Agreement**) has been completed at 21000 Brookpark Road, Fairview Park, Ohio 44135 (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 _____ in accordance with the construction contract, and the Owner has no unresolved complaints regarding the work;
- (b) 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 Investor;
- (c) Owner has complied, and will continue to comply with all applicable statutes, regulations, and resolutions or ordinances in connection with the Property and the construction of the Project;
- (d) the Owner holds fee ownership of the Property;
- (e) the general contractor for the project has not offered the Owner any payment, refund, or any commission in return for completing Project; and
- (f) all funds provided to the Owner by the Investor for the Project have been used in accordance with the Agreement

[Balance of Page Intentionally Left Blank]

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

21000 Brookpark Landlord 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 Investor, on the date on which the Energy Project Cooperative Agreement becomes effective, shall disburse to the ESID or to the respective payee set forth below, the following closing costs:

[Insert closing costs]

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 [____], 2020 between the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of East Cleveland, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc., doing business under the registered trade name Northeast Ohio Advanced Energy Improvement District (the “ESID”), Assignor, PACE Equity LLC, and the City of Fairview Park, Ohio (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 Cuyahoga County Treasurer, the City of Fairview Park, Ohio, the ESID, 21000 Brookpark Landlord LLC, and PACE Equity LLC (the “Special Assessment Agreement”) and to the “Owner Consent” dated as of [____], 2020 by 21000 Brookpark Landlord LLC and recorded in the records of the Cuyahoga County Fiscal Officer 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 Investor, 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 I

INVESTOR ACCOUNT AND PAYMENT INFORMATION

[Insert Investor Account and Payment Information]

ENERGY PROJECT COOPERATIVE AGREEMENT

By and among

CITY OF BEDFORD, OHIO, CITY OF BEDFORD HEIGHTS, OHIO, CITY OF BEREA, OHIO, CITY OF BROOK PARK, OHIO, CITY OF BROOKLYN, OHIO, CITY OF CLEVELAND, OHIO, CITY OF CLEVELAND HEIGHTS, OHIO, CITY OF EAST CLEVELAND, OHIO, CITY OF EUCLID, OHIO, CITY OF FAIRVIEW, OHIO, CITY OF GARFIELD HEIGHTS, OHIO, CITY OF LAKEWOOD, OHIO, CITY OF MAPLE HEIGHTS, OHIO, CITY OF PARMA, OHIO, CITY OF PARMA HEIGHTS, OHIO, CITY OF SHAKER HEIGHTS, OHIO, CITY OF SOLON, OHIO, CITY OF SOUTH EUCLID, OHIO, CITY OF UNIVERSITY HEIGHTS, OHIO ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:
NORTHEAST OHIO ADVANCED ENERGY DISTRICT;

21000 BROOKPARK LANDLORD LLC;

PACE EQUITY LLC; and

CITY OF FAIRVIEW PARK, OHIO

Dated as of [____], 2020

BRICKER & ECKLER LLP

ENERGY PROJECT COOPERATIVE AGREEMENT

THIS ENERGY PROJECT COOPERATIVE AGREEMENT (the “Agreement”) is made and entered into as of [____], 2020, between the CITY OF BEDFORD, OHIO, CITY OF BEDFORD HEIGHTS, OHIO, CITY OF BEREA, OHIO, CITY OF BROOK PARK, OHIO, CITY OF BROOKLYN, OHIO, CITY OF CLEVELAND, OHIO, CITY OF CLEVELAND HEIGHTS, OHIO, CITY OF EAST CLEVELAND, OHIO, CITY OF EUCLID, OHIO, CITY OF FAIRVIEW, OHIO, CITY OF GARFIELD HEIGHTS, OHIO, CITY OF LAKEWOOD, OHIO, CITY OF MAPLE HEIGHTS, OHIO, CITY OF PARMA, OHIO, CITY OF PARMA HEIGHTS, OHIO, CITY OF SHAKER HEIGHTS, OHIO, CITY OF SOLON, OHIO, CITY OF SOUTH EUCLID, OHIO, CITY OF UNIVERSITY HEIGHTS, OHIO ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., doing business under the registered trade name NORTHEAST OHIO ADVANCED ENERGY DISTRICT, a nonprofit corporation and special improvement district duly organized and validly existing under the laws of the State of Ohio (the “State”) (the “ESID”), 21000 BROOKPARK LANDLORD LLC, a limited liability company duly organized and validly existing under the laws of the State of Ohio (the “State”) (the “Owner”), PACE EQUITY LLC, a limited liability duly organized and validly existing under the laws of the State of Wisconsin (the “Investor”), and the CITY OF FAIRVIEW PARK, OHIO, a municipal corporation duly organized and validly existing under the constitution and laws of the State (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. On [___], 2020, the Council of the City (“City Council”) passed Ordinance No. [___]-20, which approved the Petition to Add Territory to the Northeast Ohio Advanced Energy District and for Special Energy Improvement Project (the “Petition”) and the Articles of Incorporation of the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of East Cleveland, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc.

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 [___], 2020, by its Ordinance No. [___]-20, the City Council further approved the Plan, as a plan for public improvements or public services for the ESID under Ohio Revised Code Chapter 1710.02(F).

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 Plan.

F. The ESID, the Owner, the Investor, 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, installation, equipment, and improvement of energy special improvement projects and to further the public purposes set forth above is through this Agreement, pursuant to the Special Assessment Act and on the terms set forth in this Agreement, with (i) the Investor providing the Project Advance to finance the costs of the special energy improvement projects described in the Plan, (ii) the ESID and the Owner cooperating to acquire, install, equip and improve special energy improvement projects, (iii) the Owner agreeing to make Special Assessment payments 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 Investor to repay the Project Advance; and (v) the ESID agreeing to assign, transfer, and set over to the Investor 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 be 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 Investor, 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 Special Assessment 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 Investor. The Owner and the ESID have requested the assistance of the Investor 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 Investor 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, installation, equipment, and improvement 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 Investor, 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 Investor, to pay the costs of the Project at the times and in the manner provided in this Agreement; provided, however, that the City, the ESID, and the Investor 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 Investor. The City, the ESID, and the Investor further intend and agree that the Investor shall pay to the ESID, out of the Special Assessments received by the Investor, a semi-annual fee of \$[_____] for the ESID's administrative expenses; provided, however, that if the amount of Special Assessments received by the Investor 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 \$[_____] 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 Investor, 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 Investor 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 taken all necessary actions required by the Special Assessment Act to levy and collect the Special Assessments on the Property.

Pursuant to Ohio Revised Code Section 727.33, the City has certified the Special Assessments to the County Fiscal Officer for collection, and the County Fiscal Officer 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 Fiscal Officer 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. The ESID and the Investor 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 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 Fiscal Officer, 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 may be prepaid to the Investor by the Owner in accordance with Section 4.7 of this Agreement. 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 Investor, and, unless provided the express written consent of the Investor, 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 Investor.

- (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 Investor. If the Owner causes the Special Assessments to be prepaid in accordance with Sections 2.2(c) and 4.7 of this Agreement, upon the City's receipt of the Investor's express written consent or instruction, the City shall certify to the County Fiscal Officer, prior to the last date in the then-current tax year on which municipal corporations may certify special assessments to the County Fiscal Officer, a reduction in the amount of Special Assessments 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, the remaining outstanding principal of the Project Advance, together with interest at the annual rate of 6.05%, a \$600.00 semi-annual servicing fee to the Investor, and a \$[_____] semi-annual administrative fee to the ESID. The parties acknowledge and agree that County Fiscal Officer may calculate, charge, and collect a collection fee on each annual installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Fiscal Officer 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. 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 Investor.
- (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 Investor all of its right, title and interest in and to: (i) the Special Assessments received by the City under this Agreement, (ii) the City's special assessment funds established for the Project, and (iii) any other property received or to be received from the City under this Agreement. The City further shall transfer, set over, and pay the Special Assessments and Delinquency Amounts to the Investor in accordance with this Agreement. The ESID acknowledges and consents to the City's assignment of the Special Assessments to the Investor. The Parties agree that each of the City, the ESID, and the Investor, 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 Fiscal Officer, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings.

- (f) Transfer of Special Assessments. The parties anticipate that semi-annual installments of the Special Assessments and Delinquency Amounts will be paid to the City by the County Fiscal Officer 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 Fiscal Officer and County Treasurer will pay the Special Assessments and Delinquency Amounts to the City on or before June 1 of each year. Immediately upon receipt of any moneys received by the City as Special Assessments, but in any event not later than 21 calendar days after the receipt of such moneys and the corresponding final settlement from the County Fiscal Officer, the City shall deliver to the Investor all such moneys received by the City as Special Assessments and Delinquency Amounts by ACH or check as determined in the sole discretion of the City. The Investor shall provide the City with account and payment information in the form of **Exhibit I** on the date on which this Agreement becomes effective. The Investor may from time to time provide updated written account and payment information in the form of **Exhibit I** to the City for the payment of Special Assessments and Delinquency Amounts, but the City shall maintain its right to send the special assessments by ACH or check in its sole discretion. If at any time during the term of this Agreement the County Fiscal Officer agrees, on behalf of the City, to disburse the Special Assessments and Delinquency Amounts to the Investor pursuant to instructions or procedures agreed upon by the County Fiscal Officer and the City, then, upon each transfer of an installment of the Special Assessments and Delinquency Amounts from the County Fiscal Officer to the Investor, the City shall be deemed to have satisfied all of its obligations under this Agreement to transfer that installment of the Special Assessments and Delinquency Amounts to the Investor.
- (g) Repayment of Project Advance. The Investor 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 Investor, on the dates shown on the Repayment Schedule, further shall pay to the ESID, after the payment of accrued interest on the Project Advance, the repayment of the portion of principal of the Project Advance scheduled to be repaid on such date, and the payment of a \$600.00 semi-annual servicing fee to the Investor, a semi-annual fee of \$[_____] 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 Fiscal Officer 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 Fiscal Officer with the Special Assessments, and that the County Fiscal Officer will retain such fee.

Section 2.3. Obligations Unconditional; Place of Payments. The City's obligation to transfer the Special Assessments and any Delinquency Amounts to the Investor 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 Investor, the ESID, or the Owner; provided, however, that the City's obligation to transfer the Special Assessments and any Delinquency Amounts is limited to the Special Assessments and any Delinquency Amounts 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 and Delinquency Amounts 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 Investor all Special Assessments and Delinquency Amounts 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 and Delinquency Amounts 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 the City's obligation under this Agreement to pay to the Investor all Special Assessments and Delinquency Amounts 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 and Delinquency Amounts 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 has no obligation to use or apply to the payment of the Special Assessments and Delinquency Amounts any funds or revenues from any source other than the moneys received by the City as Special Assessments and Delinquency Amounts; provided, however, that nothing in this Agreement shall be deemed to prohibit the City from using, to the extent that it is authorized to do so, any other resources for the fulfillment of any of this Agreement's terms, conditions, or obligations.

Section 2.5. Security for Advanced Funds. To secure the transfer of the Special Assessments by the City to the Investor, and in accordance with the Special Assessment Act, 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 Investor. 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 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 City 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 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.
- (d) It, by proper action, duly has 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.
- (e) There is no litigation pending, or to its knowledge 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.
- (f) 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 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. The Owner's Representations and Warranties. 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 of Ohio. 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 Investor of any Action commenced or to its knowledge threatened against it.
- (d) It is not in default under this Agreement, and 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 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 its 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, installing, equipping and improving of its 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 Investor 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 Investor, 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 Investor in writing, and the financial statements which have been delivered to the Investor 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 Investor 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, environmental 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.
- (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 Investor, in accordance with the distribution priority specified in Section 4.3.

- (l) Each Disbursement Request Form presented to the Investor, 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 Investor in writing.
- (n) The Project and the plans and specifications for the Project have been developed pursuant to an energy audit prepared by the Investor, which energy audit demonstrates that the Project is expected to generate \$[12,879.00] in average 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 shall take any and all action necessary to remain in compliance with the Special Assessment Act.

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 Investor; 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 Investor, 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 H**; (ii) execute, cause the transferee or purchaser to execute, and deliver to the Investor, an assignment of all construction contracts related to the Project; and (iii) pay all legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel. 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 Investor, 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.
- (c) It shall not, without the prior written consent of the Investor, 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, installation, equipment, and improvement of the Project.
- (e) Once annually until the Completion Date, the chief financial officer of the Owner shall provide the Investor with a certificate setting forth all sources and uses of funds with respect to the Project.
- (f) It promptly shall notify the Investor of any material damage or destruction to the Project.
- (g) Upon the reasonable request of the Investor, 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.
- (h) It shall not cause the Property to be subdivided, platted, or otherwise separated into any additional parcels in the records of the County Fiscal Officer without the consent of the Investor. In the event that at any time following the Closing Date the Property is combined or subdivided into permanent parcels in the records of the County Fiscal Officer, then the Special Assessments shall be allocated among the resulting parcels in proportion to the improved building square footage of the existing parcels that is contained in each resulting parcel that contains a portion of an existing parcel. The Owner hereby certifies, represents, and warrants to the ESID, the Investor, and the City that in the event of a combination or subdivision

of parcels, the portion of the Special Assessments allocated to each resulting parcel as described above will be in proportion to, and will not exceed, the special benefits to be conferred on the resulting parcel or parcels by the Project.

- (i) 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 Investor. 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. There is no environmental remediation required (or anticipated to be required) with respect to the Property. The Owner does not know of, and has not received, any written or oral 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.

ARTICLE IV: PROJECT ADVANCE; CONSTRUCTION OF PROJECT; REPAYMENT

Section 4.1. Project Advance. The Investor has made available to the Owner the Project Advance in the amount of \$2,960,345.00, of which \$[_____] will be net funded into the Project Account (as defined below) for disbursement pursuant to Section 4.2, closing costs in the amount of \$[_____] will be disbursed by the Investor in accordance with Section 4.2 and **Exhibit E**, and capitalized interest in the amount of \$[_____] will be retained for the account of the Investor for further payment to itself and the EISD in accordance with this Agreement. The Disbursing Agent shall hold the Project Advance in a segregated account established in the custody of the Investor, which account shall be referred to as the "Project Account." Subject to the terms and conditions of this Agreement, the Disbursing Agent, upon the direction of the Owner, shall cause the Disbursing Agent to 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.

If the Project Advance net funded to the Owner is insufficient to pay the costs of the Project pursuant to this Agreement, the Owner, nevertheless, shall complete the acquisition, installation, equipment, and improvement of its Project, and the Owner shall pay all such additional costs of its Project from its own funds. The Owner shall not be entitled to reimbursement for any such additional costs of its Project, nor shall it be entitled to any abatement, diminution, or postponement 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 Disbursement Request Forms (a form of which is attached to this Agreement as **Exhibit C**) to the

Investor, which Disbursement Request Forms each shall, in part, set forth the payments or reimbursements requested, and shall be accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested. In addition, the following shall occur:

- (a) With each Disbursement Request Form:
 - (i) The Owner shall deliver to the Investor proof that each project milestone has occurred;
 - (ii) The Owner shall deliver to the Investor copies of all related receipts and invoices;
 - (iii) The Owner shall deliver to the Investor signed lien waivers in the form attached to the Disbursement Request Form as Schedule 2;
 - (iv) The Owner shall deliver to the Disbursing Agent, on behalf of the Investor, as necessary, bank information for wiring the amounts requested for disbursement;
 - (v) The Investor shall have received copies of all other disbursement requests for disbursements of other sources of funds, including from the loan from the Owner's Lender, that have been submitted on or prior to the date on which the related Disbursement Request is submitted, and all such disbursement requests shall have been validly approved in accordance with the Lender Loan Documents; and
 - (vi) All of the conditions to disbursement under the Disbursing Agreement shall have been satisfied.

- (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 Investor copies of all construction permits required for the construction of the Project;
 - (ii) The Owner shall deliver to the Investor copies of all agreements with all subcontractors performing work or furnishing materials for the Project;
 - (iii) The Owner shall deliver to the Investor 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 Investor 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 Investor in its sole discretion;
 - (vi) The budget shall have been approved by the Investor in its sole discretion;
 - (vii) The Owner shall deliver to the Investor 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 G**;
 - (viii) The Owner shall provide to the Investor evidence acceptable to the Investor, in its sole discretion, that the City Council and the ESID have approved the Project;

- (ix) The Investor shall receive the executed Special Assessment Agreement and Owner Consent and evidence that the same has been recorded in the records of the Fiscal Officer of Cuyahoga County, Ohio with respect to the Property;
 - (x) The Owner and the ESID shall provide to the Investor original executed copies of this Agreement and any related certificates;
 - (xi) The Owner shall provide to the Investor a list of authorized representatives on whose instructions and directions the Investor may rely until such time as an updated list has been provided, as set forward in **Exhibit I**, attached hereto.
- (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 Investor the final lien waiver and release;
 - (ii) The Owner shall deliver to the Investor the executed certificate in the form attached as **Exhibit D** to this Agreement; and
 - (iii) The Owner shall deliver to the Investor copies of all completion inspections and closed permits with respect to the Project.

Upon its receipt of each completed Disbursement Request Form, the Investor shall approve all or a portion of the payment or reimbursements requested to be disbursed from the Project Account. To the extent the Investor approves the payment or reimbursements requested to be disbursed from the Project Account, the Investor shall cause the Disbursing Agent to 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 Investor.

Additionally, on the date this Agreement becomes effective, the Investor shall cause the Disbursing Agent to disburse to the ESID for closing costs related to the financing described in this Agreement in an amount not to exceed \$[_____], as detailed in **Exhibit E** to this Agreement. Without limiting the generality of the foregoing, disbursements made pursuant to this paragraph may be for fees to the Investor, fees to the ESID, legal fees, fees to the City, and other closing costs or contingencies.

If at any time an Event of Default has occurred and is continuing under this Agreement, the Investor may withhold approval of any requests for disbursement until the Event of Default is cured and its effects are removed.

Notwithstanding the foregoing, upon the Investor's receipt from the Owner's Lender of notice of a default under the Lender Loan Documents beyond the expiration of any applicable notice and cure period, the Owner shall forfeit all rights under this Agreement to the Lender (including, without limitation, any rights to disbursements), and the Lender shall be entitled to all of the rights of the Owner under this Agreement. So long as the Owner's Lender has cured (or caused the cure of) any Event of Default under this Agreement, or, if any Event of Default is not curable by the Lender, the Lender has agreed to complete construction of the Project notwithstanding the Event of Default under this Agreement, then disbursements shall be made available to the Lender in accordance with this Agreement and the Disbursing Agreement. In such event, the Owner hereby irrevocably makes, constitutes, and appoints the Owner's Lender as the

Owner's true and lawful attorney and agent-in-fact to execute all documents and other agreements and instruments and do such other acts and things as may be necessary to preserve and perfect its interests and rights under this Agreement. The Owner acknowledges and agrees that its appointment of the Lender as its attorney and agent-in-fact for the purposes specified in this Section is an appointment coupled with an interest and shall be irrevocable until all of the obligations under the Lender Loan Documents are satisfied. Nothing contained in this Section shall obligate the Lender to perform any obligations on behalf of the Owner (including, without limitation, the obligation to complete the Project).

Section 4.3. Casualties and Takings. The Owner shall promptly notify the Investor 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 to the Owner's Lender and to the Investor in accordance with their insured interests, 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 Investor shall remain obligated to cause the Disbursing Agent 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 Investor's reasonable judgment, said insurance proceeds are insufficient to complete the restoration, the Owner shall deposit with the Disbursing Agent such amounts as are necessary, in the Investor'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, provided that if the Takings proceeds are not used to restore the Property and the Project, Takings proceeds will be distributed to Owner's and to the Investor in accordance with their insured interests, and any excess Takings proceeds will be paid to the Owner. If the Lender determines not to restore the Property or the Project and release funds related thereto to the Owner, the Investor's obligation to cause the Disbursing Agent 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 Investor's reasonable judgment, the Taking proceeds available to the

Owner and the Investor are insufficient to complete the restoration, the Owner shall deposit with the Disbursing Agent such amounts as are necessary, in the Investor'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 Investor's obligation to cause the Disbursing Agent 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 Investor shall cause the Disbursing Agent to release the funds for such purpose. If, in the Investor's reasonable judgment, the Taking proceeds available to the Owner and the Investor are insufficient to complete the restoration, the Owner shall deposit with the Disbursing Agent such amounts as are necessary, in the Investor'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, installation, equipment, 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, installation, equipment, 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 Investor, which approval shall not be unreasonably withheld, shall acquire, install, equip, and improve its 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, installation, equipment, 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, installation, equipment, 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 acquisition, installation, equipment, and improvement of the Project, the ESID and the Investor, 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 Investor and their respective agents shall utilize commercially reasonable efforts to minimize interference with the tenants of the Property during any such inspection.

The Investor 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 Investor's opinion, after 30 days' written notice to the Owner, the construction is not proceeding with reasonable dispatch, the Investor may (i) request that the Owner remove and replace the general contractor with a general contractor acceptable to the Investor, 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 Investor 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, installation, equipment, 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 Investor; (c) that the Owner has complied, and will continue to comply with all applicable statutes, regulations, and resolutions or 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 Investor 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 agree that the Special Assessments have been levied and certified to the County Fiscal Officer in the amounts necessary to amortize the Project Advance, together with interest at the annual rate of 6.05%, a \$600.00 semi-annual servicing fee to the Investor, and a \$[_____] semi-annual administrative fee to the ESID over 50 semi-annual payments to be collected beginning approximately on January 31, 2022 and continuing through approximately July 20, 2046. The Parties further acknowledge that in addition to the amount of the Special Assessments and other related interest, fees, and penalties, the County Fiscal Officer may charge and collect a County Fiscal Officer collection fee on each annual installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Fiscal Officer 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. 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 Investor by the City. The Owner agrees to pay, as and when due, all Special Assessments with respect to its Property. 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 second semi-annual payment of the Special Assessment occurring in 2030 has been made, the Owner may prepay any portion of the principal of the Project Advance to the Investor by paying, in immediately available funds, 100% 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 Investor shall notify the City of the prepayment, and the Owner, the Investor, and the City shall cooperate to reduce the amount of Special Assessments to be collected by the County Fiscal Officer 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 Investor, or the City should incur expenses, including 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 Investor, 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 maximum rate allowable by law, shall constitute indebtedness under this Agreement, and the ESID, the Investor, 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 Investor, the Owner shall take any actions and execute any further documents as the Investor 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 transfer, or cause the transfer of, any of the Special Assessments to the Investor 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 five days of the receipt of notice, and, if so cured, such breach shall not constitute an Event of Default;
- (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 its Project;
- (f) The Owner commits waste upon its Property or its 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 30 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) Upon an Event of Default described in Section 5.1(a) only, the Investor shall become entitled to receive any Delinquency Amounts actually received by the City.
- (b) The ESID, the Investor, 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 Investor, 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.
- (c) 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 Investor, 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, 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

Investor. 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 Investor of such request, and it will not provide its consent pursuant to Section 2.1 of the Special Assessment Agreement without the Investor'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 Investor, 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 and the resolutions or ordinances in effect in the City (collectively, "Assessment Rights"). The Owner irrevocably waives all Assessment Rights as to its Project and consents to the imposition of the Special Assessments as to its 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 its 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 resolutions or 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 Investor, 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 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 notice and which, if adversely determined would impair materially the right or ability of the Parties to perform their 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. The Owner shall indemnify and hold harmless the ESID, the Investor, 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) imposed upon, incurred by or asserted against an Indemnified Party arising or resulting from (i) Owner's financing, acquisition, construction, installation, operation, use or maintenance of the Project, (ii) 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 (iii) (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. If at any time the Indemnified Party becomes dissatisfied, in its reasonable discretion, with the selection of counsel by the Owner, a new mutually agreeable counsel shall be retained at the expense of the Owner. 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 Investor, 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 Investor 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 Investor, 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 Investor shall not constitute the Investor’s approval or acceptance of the construction theretofore completed. The Investor’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 Investor, the sole obligation of the Investor 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 Investor without the Investor 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 deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, 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.

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, 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, or the Investor in other than his or her official capacity; and none of the members of the Board or the City Council, nor any official of the ESID, the Owner, the City, or the Investor 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, or agreements of the ESID, the Owner, the City, or the Investor 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 Investor, and only upon (i) the execution and delivery to the City, the Investor, 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 H**; and (ii) the execution and delivery to the Investor 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, and the Owner Consent shall be obligations of the assignee, and the assigning Owner shall be released of its obligations to a corresponding extent.

Notwithstanding anything in this Agreement to the contrary, the Investor 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, an “Investor 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 Investor shall 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 Investor Assignee shall be a party to this Agreement and shall have all of the rights and obligations of the Investor 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 Investor pursuant to the assignment documentation between the Investor and such Investor Assignee, and the Investor 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 Investor assigns any of the rights and obligations of the Investor under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to an Investor Assignee, the Investor shall (i) give prompt notice of such assignment to the other Parties and (ii) pay all legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel.

In addition, the Investor 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 Investor's obligation to make Project Advances under this Agreement or to any or all of the loans held by Investor under this Agreement. In the event of any such grant by the Investor of a participating interest to a Participant, whether or not upon notice to the Owner, the Investor shall remain responsible for the performance of its obligations under this Agreement, and the Owner shall continue to deal solely and directly with the Investor in connection with the Investor's rights and obligations under this Agreement. The Owner agrees that the Investor may furnish any information concerning the Owner in its possession from time to time to prospective Investor 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 Investor, the dates to which the Special Assessments have been paid to the Investor. 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 Investor 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.

[Signature pages to follow]

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.

CITY OF BEDFORD, OHIO, CITY OF BEDFORD HEIGHTS, OHIO, CITY OF BEREA, OHIO, CITY OF BROOK PARK, OHIO, CITY OF BROOKLYN, OHIO, CITY OF CLEVELAND, OHIO, CITY OF CLEVELAND HEIGHTS, OHIO, CITY OF EAST CLEVELAND, OHIO, CITY OF EUCLID, OHIO, CITY OF FAIRVIEW, OHIO, CITY OF GARFIELD HEIGHTS, OHIO, CITY OF LAKEWOOD, OHIO, CITY OF MAPLE HEIGHTS, OHIO, CITY OF PARMA, OHIO, CITY OF PARMA HEIGHTS, OHIO, CITY OF SHAKER HEIGHTS, OHIO, CITY OF SOLON, OHIO, CITY OF SOUTH EUCLID, OHIO, CITY OF UNIVERSITY HEIGHTS, OHIO ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A: NORTHEAST OHIO ADVANCED ENERGY DISTRICT, as the ESID

By: _____

Name: _____

Title: _____

[Signature Page to Energy Project Cooperative Agreement]

21000 BROOKPARK LANDLORD LLC, as
the Owner

By: _____

Name: _____

Title: _____

[Signature Page to Energy Project Cooperative Agreement]

PACE EQUITY LLC, as the Investor

By: _____

Name: _____

Title: _____

[Signature Page to Energy Project Cooperative Agreement]

CITY OF FAIRVIEW PARK, OHIO, as the
City

By: _____

Name: _____

Title: _____

[Signature Page to Energy Project Cooperative Agreement]

CITY FISCAL OFFICER CERTIFICATE

The undersigned, Fiscal Officer of the City of Fairview Park, Ohio, hereby certifies that the moneys required to meet the obligations of the City during the year 2020 under the foregoing Energy Project Cooperative Agreement have been lawfully appropriated by the City Council of the City of Fairview Park, 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.

Fiscal Officer
City of Fairview Park, Ohio

Dated: _____, 2020

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 [____], 2020, by and between the ESID, the Owner, the Investor, 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.

“*City*” means the City of Fairview Park, Ohio.

“*City Council*” means the Council of the City of Fairview Park, Ohio.

“*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 the County of Cuyahoga, Ohio.

“*County Fiscal Officer*” means the Fiscal Officer of the County.

“*County Prosecutor*” means the Prosecuting Attorney of the County.

“*County Treasurer*” means the Treasurer of the County.

“*Delinquency Amount*” means any penalties or interest which may be due on or with respect to any installment of the Special Assessments and which are not paid or taxable to any party other than the Investor under law.

“*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.

“*Disbursing Agent*” means [Town Bank, a Wintrust Community Bank], in its capacity as “*Depository Agent*” under the Disbursement Agreement.

“*Disbursement Agreement*” means the Disbursement Agreement dated as of [____], 2020 by and among the Owner, the Investor, and PACE Equity Holdings Titling Trust, as the PACE Assignee, as the same may be validly amended or supplemented and in effect from time to time.

“*ESID*” means the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of East Cleveland, Ohio, City of Euclid, Ohio, City of Fairview,

Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc., doing business under the registered trade name Northeast Ohio Advanced Energy Improvement District, a nonprofit corporation and energy special improvement district organized under the laws of the State.

“*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.

“*Investor*” means PACE Equity LLC, a limited liability company duly organized and validly existing under the laws of the State of Wisconsin, together with any Investor Assignee.

“*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, including, initially, and without limitation, Perpetual Federal Savings Bank.

“*Lender Loan Documents*” means any loan agreement or loan agreements, mortgage or mortgages, and any other documents and instruments executed and delivered in connection with the a loan from a Lender, as they may be amended, modified, and supplemented from time to time under their terms.

“*Notice Address*” means:

- | | | |
|-----|-----------------|--|
| (a) | As to the City: | City of Fairview Park, Ohio
20777 Lorain Road
Fairview Park, Ohio 44126
Attention: _____ |
| (b) | As to the ESID: | Northeast Ohio Advanced Energy District
165 Center Road
Bedford, Ohio 44146
Attention: Jennifer Kuzma |
| | With a Copy To: | J. Caleb Bell, Esq.
Bricker & Eckler LLP
100 S. Third Street
Columbus, Ohio 43215
Phone: (614) 227-2300
Email: pace@bricker.com |
| (c) | As to the Owner | 21000 Brookpark Landlord LLC
21000 Brookpark Road |

Fairview Park, Ohio 44135

With a Copy To:

(d) As to the Investor

PACE Equity LLC
731 North Jackson, Suite 420
Milwaukee, Wisconsin 53202
Attention: Kevin Moyer

“*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 21000 Brookpark Landlord LLC, a limited liability company duly organized and validly existing under the laws of the State of Ohio, and any permitted successors or assigns.

“*Owner Consent*” means the Owner Consent dated as of [____], 2020 by the Owner and recorded in the records of the Cuyahoga County Fiscal Officer with respect to the Property.

“*PACE Counsel*” means Bricker & Eckler LLP, an Ohio limited liability partnership.

“*Parties*” means the ESID, the Owner, the Investor, and the City.

“*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 Northeast Ohio Advanced Energy Special Improvement District Commercial-Industrial Program Project Plan and the Northeast Ohio Advanced Energy Special Improvement District Commercial-Industrial Program Services Plan adopted by the City by its Ordinance No. [__]-20 of [____], 2020, and any and all future supplemental plans approved by the ESID and the City.

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

“*Project Account*” means the segregated account in the custody of the Investor 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, 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 **Exhibit B**, which schedule establishes the dates and amounts for the repayment of the Project Advance by the Special Assessments paid by the Owner.

“*Required Builder’s Risk Insurance Coverage*” means at any time insurance coverage maintained with generally recognized, responsible insurance companies qualified to do business in the State in the minimum amount of the full replacement value of the Project and Project Site, insuring the Project against loss or damage during construction and containing loss deductible provisions not to exceed \$10,000, which insurance coverage shall name the Investor as lender loss payee.

“*Required Business Interruption Insurance Coverage*” means at all times after the Completion Date, business interruption and rent loss insurance maintained with generally recognized, responsible insurance companies qualified to do business in the State in a commercially reasonable minimum amount, which insurance coverage shall name the Investor as lender loss payee.

“*Required Flood Insurance Coverage*” means, as applicable, (i) if the Property or any part of the Property is identified by the United States Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to the lesser of: (a) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Project Advances if replacement cost coverage is not available for the type of building insured); or (b) such lesser amount as may be required by the Investor, and containing a loss deductible with respect not in excess of \$10,000 per occurrence; and (ii) earthquake insurance in amounts and in form and substance satisfactory to the Investor in the event the Property is located in an area with a high degree of seismic activity, provided that the insurance pursuant to this section shall be on terms consistent with the Required Public Liability Insurance Coverage.

“*Required Insurance Coverage*” means, collectively, the Required Builder’s Risk Insurance Coverage, the Required Business Interruption Insurance Coverage, the Required Flood Insurance Coverage (if any), 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 Investor in the event of

cancellation or nonrenewal and (ii) must name as an additional insured (mortgagee/loss payee) the Investor.

“Required Property Insurance Coverage” means at any time insurance coverage evidenced on Acord 27 and maintained with generally recognized, responsible insurance companies qualified to do business in the State in the amount of (i) 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 Investor as loss payee/mortgagee.

“Required Public Liability Insurance Coverage” means at any time commercial general accident and public liability insurance coverage evidenced on Acord 25 and maintained with generally recognized, responsible insurance companies qualified to do business in the State with coverage limits in the maximum amount of \$2,000,000 per occurrence for death or bodily injury and property damage liability combined, with loss deductible provisions of not to exceed \$10,000, which insurance coverage shall name the Investor as additional insureds.

“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, Resolution No. [_____] approving the Petition and Plan and declaring the necessity of the Project passed on [_____] , 2020, Ordinance No. [_____] determining to proceed with the Project adopted on [_____] , 2020, and Ordinance No. [_____] levying the Special Assessments adopted on [_____] , 2020, all with respect to levying special assessments on real property within the ESID.

“Special Assessments” means the special assessments levied pursuant to the Special Assessment Act 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.

EXHIBIT B
REPAYMENT SCHEDULE

[Insert repayment schedule]

EXHIBIT C

DISBURSEMENT REQUEST FORM

[See Attached]

Request No. _____

Date: _____

APPLICATION FOR PAYMENT

To: PACE Equity, LLC

Under the Energy Project Cooperative Agreement dated as of [____], 2019 (the **Energy Project Cooperative Agreement**), by and among 21000 Brookpark Landlord LLC (**Owner**), PACE Equity LLC (**Investor**), the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of East Cleveland, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc., doing business under the registered trade name Northeast Ohio Advanced Energy Improvement District (the **ESID**), and the City of Fairview Park, Ohio (the **City**), and under the Escrow and Disbursement Agreement dated as of [____], 2020 (the **Disbursement Agreement**) by and among the Owner, the Investor, and PACE Equity Holdings Titling Trust, as PACE Assignee, the undersigned hereby requests the disbursement of construction funds from the Disbursement Agent in accordance with this request, and hereby certifies as follows:

1. All capitalized terms in this Application for Payment, unless otherwise defined herein, have the meanings specified in the Energy Project Cooperative Agreement.
2. The amounts requested either have been paid by the Owner, or are justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names are stated on **Attachment I** hereto and whose invoices are attached hereto) in accordance with the invoice(s) attached hereto who have performed necessary and appropriate work or furnished necessary and appropriate materials, equipment or furnishings in the acquisition, construction and installation of the Project.
3. Final lien waivers or releases executed by all parties receiving payment directly from the previous draw request through the current draw request are **attached hereto**.
4. **Attached hereto** is a completed AIA Document g702 or equivalent document, signed by the Owner's general contractor for the Project **and** a list of the applicable payees if payment will be made to an entity or entities other than the Owner's general contractor.
5. Each disbursement to the payees listed hereunder shall constitute a representation and warranty by the Owner, as of the date that such disbursement is made, that the conditions contained in Section 4.2 of the Energy Project Cooperative Agreement have been satisfied.

[Signature page follows]

21000 Brookpark Landlord LLC

Request No. _____

By: _____
Name: _____
Title: _____
Date: _____

ATTACHMENT I
TO APPLICATION FOR PAYMENT

SCHEDULE OF PAYMENTS REQUESTED

(Payments to be made in accordance with instructions on invoice attached hereto)

Payee Name	Description	Total Payment	Payment Directions

EXHIBIT D

FORM OF COMPLETION CERTIFICATE

21000 Brookpark Landlord 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 City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of East Cleveland, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc., doing business under the registered trade name Northeast Ohio Advanced Energy Improvement District, the City of Fairview Park, Ohio and PACE Equity LLC (the **Investor**) dated as of [____], 2020 (the **Agreement**) has been completed at 21000 Brookpark Road, Fairview Park, Ohio 44135 (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 _____ in accordance with the construction contract, and the Owner has no unresolved complaints regarding the work;
- (b) 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 Investor;
- (c) Owner has complied, and will continue to comply with all applicable statutes, regulations, and resolutions or ordinances in connection with the Property and the construction of the Project;
- (d) the Owner holds fee ownership of the Property;
- (e) the general contractor for the project has not offered the Owner any payment, refund, or any commission in return for completing Project; and
- (f) all funds provided to the Owner by the Investor for the Project have been used in accordance with the Agreement

[Balance of Page Intentionally Left Blank]

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

21000 Brookpark Landlord 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 Investor, on the date on which the Energy Project Cooperative Agreement becomes effective, shall disburse to the ESID or to the respective payee set forth below, the following closing costs:

[Insert closing costs]

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 [____], 2020 between the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of East Cleveland, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc., doing business under the registered trade name Northeast Ohio Advanced Energy Improvement District (the “ESID”), Assignor, PACE Equity LLC, and the City of Fairview Park, Ohio (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 Cuyahoga County Treasurer, the City of Fairview Park, Ohio, the ESID, 21000 Brookpark Landlord LLC, and PACE Equity LLC (the “Special Assessment Agreement”) and to the “Owner Consent” dated as of [____], 2020 by 21000 Brookpark Landlord LLC and recorded in the records of the Cuyahoga County Fiscal Officer 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 Investor, 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 I

INVESTOR ACCOUNT AND PAYMENT INFORMATION

[Insert Investor Account and Payment Information]



Memo

To: Council President Kilbane and All Members of Council
From: Mary Kay Costello, Director of Public Service and Development
Date: August 11, 2020
Re: Ordinances for Brookpark Project (Former NASA Site)

Legislation (one resolution and two ordinances) is being proposed in support of Ceres Enterprises and 21000 Brookpark Partners LLC efforts to make improvements to the Brookpark Road (former NASA site) which are eligible for Property Assessed Clean Energy (PACE) financing. This financing requires support from an Advanced Energy District to verify eligibility, engineers / prequalified installers' determination of technical feasibility and determination of financial / economic feasibility – all of which have been achieved. The First Suburbs Consortium's recommended Advanced Energy District has assisted the developers' and Bricker & Eckler LLP finance and energy professionals have assisted with the financing and energy saving requirements.

If legislation is passed, the financed funds become a 'special assessment' which are levied upon the property and transfers with the property. Total financing for improvements at the "K" and "L" buildings is proposed at \$15,645,675.00 which will result in (bi-annual payments) totaling \$332,913.50 per annum until 2046 being assessed upon the property. The financing will provide energy efficient roofing, windows, walls, sky-lights, lighting, boiler and air systems, heat pumps and plumbing and new elevators. These projects have been vetted through the finance and energy savings professionals at Bricker & Eckler and will yield improvements and offer future savings through energy efficiencies. (Savings realized are projected to be: 30% water use reduction, 37% savings by installing new elevators and 54% improvement over code requirements for roof energy efficiencies, 75% to 87% efficiencies in lighting and 43% improvement for boiler and air systems over code requirements.)

This project requires:

- One (1) Resolution of Necessity - describes the improvements in 2 buildings (K and L) and constructs the proposed improvements as one special energy improvement project to establish eligibility for special assessment financing.
- One (1) Ordinance to Proceed – which adopts the aforementioned Resolution of Necessity and allows information to be forwarded to the Fiscal Officer in Cuyahoga County for the financing to be assessed to the property.
- One (1) Ordinance authorizing the Mayor to sign documents on behalf of the City to execute necessary Energy Project Cooperative Agreements and Special Assessment Agreements and to authorize the Fiscal Officer of Cuyahoga County to enact the special assessments.

The corresponding Resolution and Ordinances are not presented as emergency legislation

because under Article IV, Section 12(a) of the Charter an ordinance or resolution providing for the appropriation of money for improvements petition for by the owners benefited and specially assessed shall take effect upon its approval. The City is requesting a suspension of rules for all three pieces of legislation and ask that legislation be considered for passage, after two reads, at the September 8th legislative meeting of Fairview Park City Council in order to comply with the financing schedule proposed for the developer by Bricker & Eckler LLP.

If you have any questions, please do not hesitate to contact me. Thank you.

cc: Mayor Cooney
Council Clerk Westbrook
Director of Law Riley
Director of Finance Cingle

All ordinances, resolutions, statements, orders, proclamations and reports required by law or by this Charter or by ordinance to be published or posted, shall be posted at one place, the City Hall, for a period of not less than fifteen (15) days prior to the taking effect thereof. Any emergency ordinance or resolution shall also be published or posted as aforesaid, but said requirements shall not postpone the immediate taking effect thereof as provided in Section 12 of this Article. (Amended 11-6-90; 11-3-09.)

SECTION 12. EFFECTIVE DATE OF ORDINANCES AND RESOLUTIONS.

(a) Each ordinance or resolution providing for the appropriation of money, for an annual tax levy, or for improvements petitioned for by the owners of a majority of the front footage of property to be benefited and specially assessed therefor, and any emergency ordinance, resolution or other action necessary for the immediate preservation of public peace, health or safety, shall take effect, unless a later date be specified therein, upon its approval by the Mayor, or upon the expiration of the time within which it may be vetoed by the Mayor, or upon its passage after veto by the Mayor, as the case may be.

No other ordinance, resolution or action of Council shall become effective until forty (40) days after its approval by the Mayor or upon the expiration of the time within which it may be vetoed by the Mayor or upon its passage after veto by the Mayor, as the case may be.

Each emergency ordinance, resolution or other action shall contain a statement of and reasons for the necessity for such emergency action, and shall require the affirmative vote of a majority plus one of the members elected to Council for its enactment.

No action of Council, whether legislative or administrative in nature, (1) authorizing the surrender or joint exercise of any municipal power; (2) granting any franchise; (3) entering into a contract, consent agreement or compact with any other governmental unit, agency or association of any kind, including regional government or agency; (4) rezoning any property; (5) changing the uses permitted in any zoning district or classification; (6) amending or repealing any zoning ordinance; or (7) providing, permitting, authorizing, enlarging or approving any (a) public, low-cost, subsidized and/or scatter-site housing or housing project; (b) government rent or mortgage supplement scheme or plan of any type whatsoever, whether publicly or privately owned or leased; (c) group housing unit having more than three unrelated persons; (d) converting any multi-family dwelling (apartment house) into condominiums; (e) the erection of any dwelling or dwelling unit which does not conform to the then existing zoning or building codes, as the same are applied to all other single or multi-unit dwellings, as the case may be; or (f) establishing or providing for any urban renewal district or project; shall be designated an emergency measure nor enacted under a suspension of the rules.

The reasons for, necessity for, facts supporting the reasons for and/or necessity for and/or the bonafides of any emergency ordinance, resolution or other action of Council shall be subject to Judicial review.

(b) All ordinances, resolutions, proclamations, motions, and Charter provisions, existing prior to the date of adoption hereof inconsistent with this section are hereby repealed and declared null and void.

Property Assessed Clean Energy (PACE) Financing in Ohio

Caleb Bell

614.227.2384

jbelle@bricker.com

Margaret Comey

513.688.8433

Margaret.Comey@lockelord.com

What We'll Cover Today

- Understand municipal special assessment process.
- Understand the difference between regular special assessments and PACE special assessments.
- Identify PACE-eligible improvements.
- Identify projects that are candidates for PACE financing.
- Understand lending alternatives for PACE projects.
- Case studies
- Q&A

PACE – “Property Assessed Clean Energy”



Special Assessments Generally – Public Use

Special assessments:

- governmental charges
- not taxes
- imposed on real property benefited by an improvement
- used to pay the costs of improvement
- imposed in recognition of the “special benefit” received
- collected like real property taxes

Special Assessments for Energy Improvements – Private Use

- PACE assessments fund privately-owned improvements.
- PACE assessments use existing or modified special assessment laws.
- Privately-owned improvements must be “public use” or provide “public good.”
- States adopted PACE laws or relied on State constitutional provisions stating that energy conservation is a “public good.”
- Due process concerns are modified or reduced.

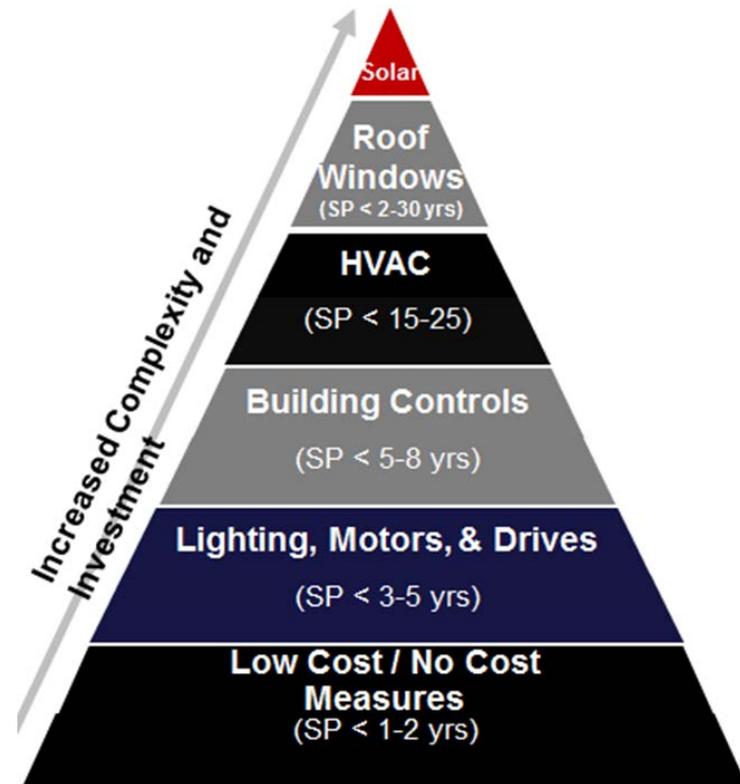
Special Assessments for Energy Improvements – Private Use

- Energy efficiency improvements
 - HVAC
 - Lighting
 - Roofs, windows, insulation
- Alternative energy improvements
 - Solar photovoltaic (PV) and thermal
 - Wind
 - Geothermal
 - Biomass
- Water efficiency improvements



Ohio's PACE Law

- Solar photovoltaic (i.e., roof-top and ground-mounted solar arrays)
- Solar thermal systems (i.e., solar water heating systems)
- Geothermal
- Wind
- Biomass
- Gasification
- **Energy efficiency improvements**



Ohio's PACE Law

“Energy Efficiency Improvement” is given a special statutory definition:

- “...energy efficiency technologies, products, and activities that (1) reduce or support the reduction of energy consumption, (2) allow for the reduction in demand, or (3) support the production of clean, renewable energy and that are or will be permanently fixed to real property.”

“Reduction In Demand” means:

- “...a change in customer behavior or a change in customer-owned or operated assets that reduces or has the capability to reduce the demand for electricity as a result of price signals or other incentives.”

Ohio's PACE Law

“Customer-generated energy project” means:

“... a wind, biomass, or gasification facility that produces electricity”

- EITHER the facility is designed to have a generating capacity of 250kw or less
- OR the facility is:
 - Designed to have a generating capacity of more than 250kw;
 - Operated in parallel with electric transmission and distribution facilities serving the real property at the site of the customer-generated energy project;
 - Intended primarily to offset part or all of the facility owner's requirements for electricity at the site of the customer-generated energy project and is located on the facility owner's real property; and
 - Not producing energy for direct sale by the facility owner to the public.

Special Assessment Authorization

- PACE assessments require the creation of districts or programs.
- Ohio ESIDs require
 - formation of a separate legal entity
 - articles, codes, and board representation
 - audits
 - other action items

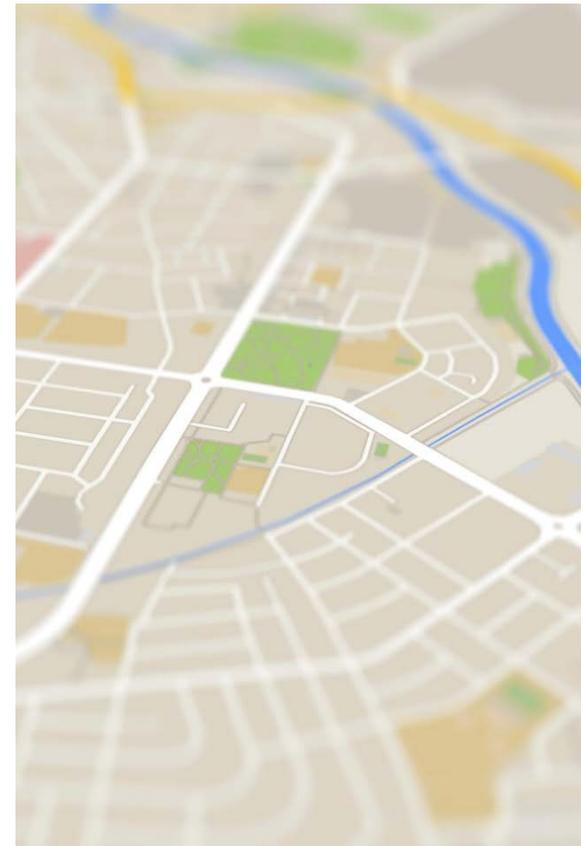
Energy Special Improvement Districts

- ESIDs are available for all property types (i.e., residential, commercial, industrial, non-profit and government property)
- Petition(s) by property owner(s)
- Legislative approval by local government
- District territory may be noncontiguous
- Single parcel projects

ESIDs - Applicable Law

Ohio Revised Code Section 1710.02(A)

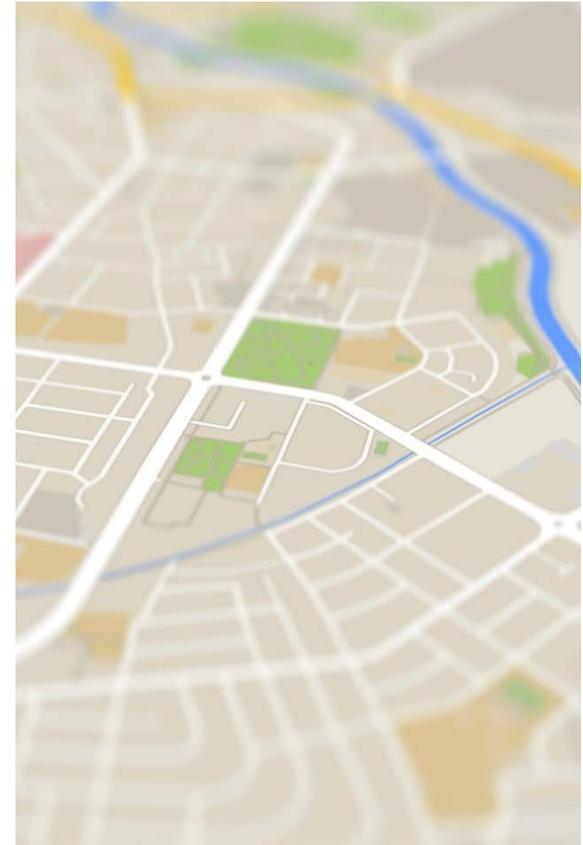
“A special improvement district may be created within the boundaries of any one municipal corporation, any one township, or any combination of contiguous municipal corporations and townships...”



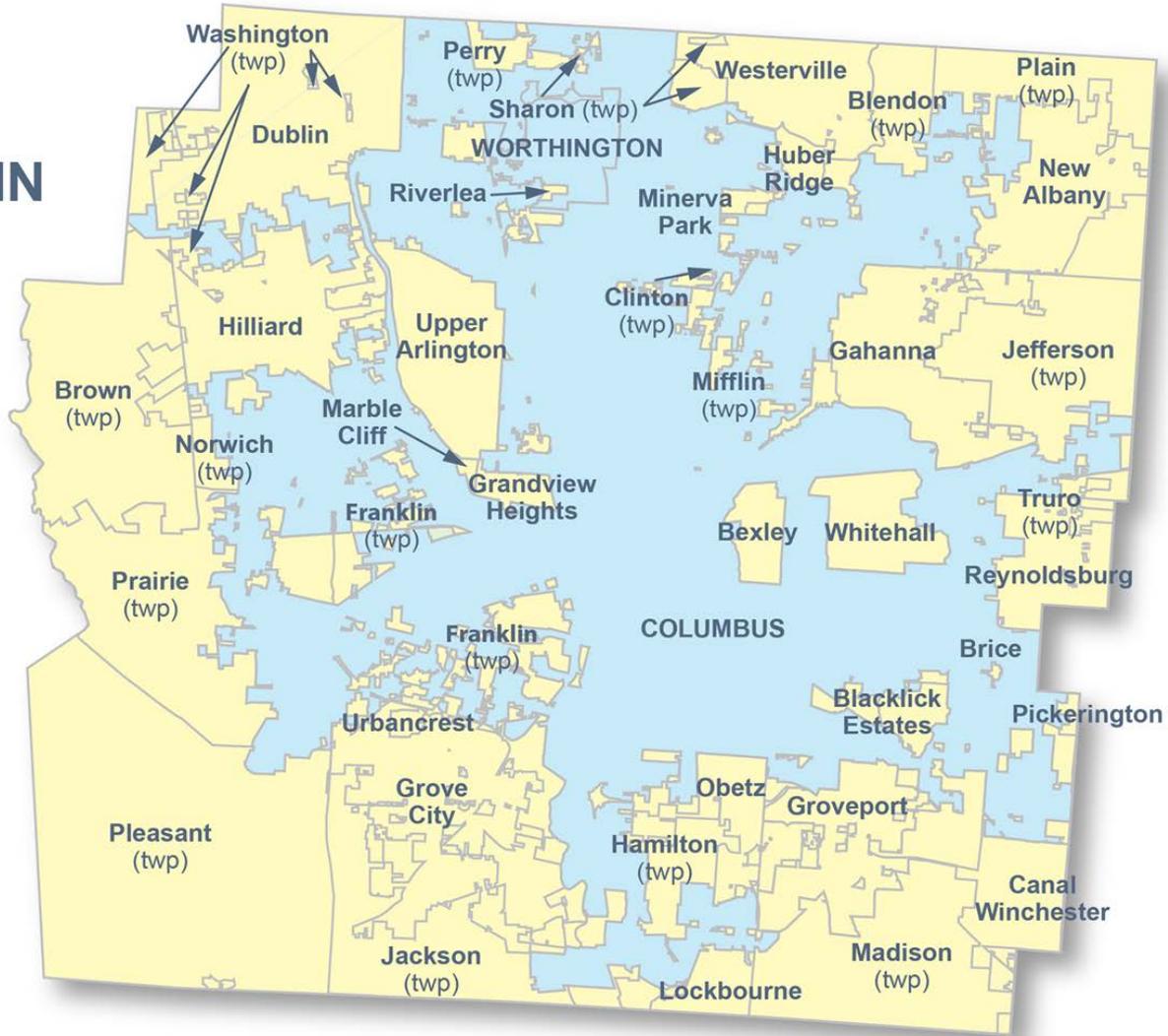
ESIDs - Applicable Law

Ohio Revised Code
Section 1710.02(A) cont.

“...territory in a special improvement district may be noncontiguous if at least one special energy improvement project is designated for each parcel of real property included within the special improvement district.”



FRANKLIN



Ohio PACE Programs



PACE Financing Case Studies

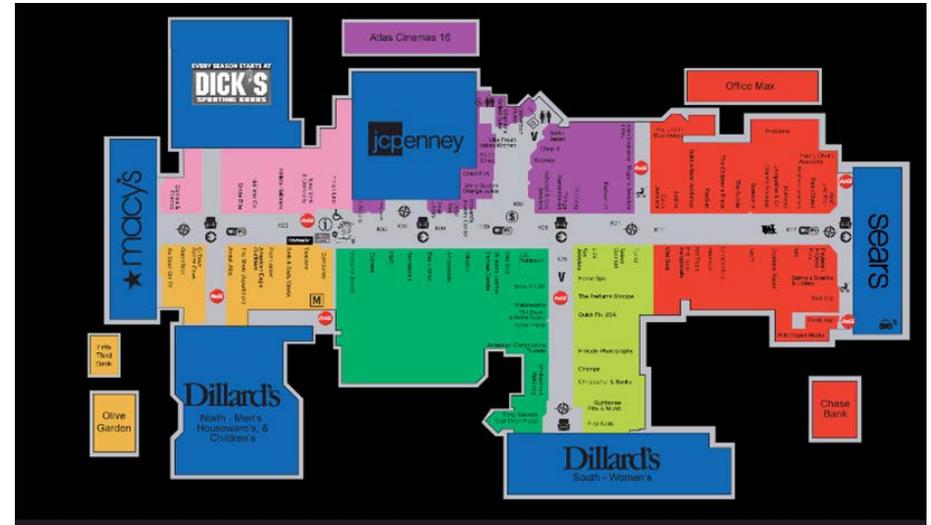


PACE Financing Case Studies

- PACE can be a tool added to other tools used in a project financing, such as TIF, HTC and Bonds
- PACE can be utilized on a single parcel or a single campus; PACE need not be city-wide or district-wide.
- PACE could be a project financing tool for any large user of power with deferred maintenance such as:
 - Commercial properties
 - Manufacturers
 - Colleges and universities
 - Hospitals
 - Municipal, county or township properties

Case Study: Great Lakes Mall

- \$3,375,000
- Port Authority + ESID + City
- Owner of Great Lakes Mall requested special assessments on main mall parcel
- Energy efficient roofing and 10 HVAC systems
- Mall tenants with triple-net leases obligated to pay proportionate share of tax bill and operating expenses
- Transaction was win-win:
 - Mall owner gets cost recovery for capital improvements
 - Mall tenants have lower costs (energy savings vs. tax bill)



Case Study: PNC Tower

Port Authority + ESID + City + County + State

- \$2,785,000 Bonds
- \$400,000 Loan
- \$920,000 Loan Loss Reserve Grant



Case Study: PNC Tower

- Owner of PNC Tower desired energy upgrades to enhance building
- Energy efficient roofing
- Air controls
- Lighting controls
- Existing tenants with triple-net leases obligated to pay proportionate share of tax bill and operating expenses

Case Study: Delco Lofts Project

- Urban redevelopment project in Dayton
- Historic industrial manufacturing building
- Redeveloped by Crawford Hoying Development Partners
- 134 market rate apartments, parking, amenities, and first-floor retail



Case Study: Delco Lofts Project

- \$17.6M Senior/Bridge Financing
- \$4.4M of Federal Historic Tax Credits (+/- 90% face value)
- \$5M in State Historic Tax Credits (+/-75% face value)
- \$3.8M Dayton Port Bonds
- PACE Financing
 - LED Lighting
 - Windows
 - HVAC
 - Insulation
 - Thermostats/Controls
- \$650,000 Dayton Port Sales Tax Savings



Case Study: Timberline

- \$926,000, part of overall \$4.5 million financing
- ESID + City + Owner's Lender
- Energy efficient roofing and HVAC systems
- Special assessments pledged as additional security for loan; if owner makes all loan payments, no special assessments are due
- Transaction benefits everyone:
 - Energy savings allow cost recovery for capital improvements
 - Lender gets additional security for PACE portion of the overall financing
 - Owner gets lower interest rate due to additional security



Case Study: City of Sharonville

- Adjoining parcels, each with an office building
- Energy management control systems, CO2 sensors, and LED lighting
- About \$240,000 total in energy improvements between the two buildings



Case Study: Kids First Sports Center

- 108,000-square-foot youth sports facility financed through PACE
- \$650,000 energy improvement project:
 - Installation of rooftop solar panels
 - Replacement of fluorescent lighting with LED lighting
 - Installation of new insulation panels in gymnasium
- Provides 100% of the energy project's cost and is repaid for up to 25 years with a voluntary special assessment added to the property's tax bill
- Financing by private lender focused on PACE financing



PACE Project Candidates

- Complicated projects
- Urban projects
- Retrofit projects
- New construction
- PACE can help replace equity requirements!



Questions & Discussion

Caleb Bell

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Margaret Comey

Senior Counsel, Locke Lord LLP



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Cincinnati, Ohio 45230

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513.688.8433

CITY OF FAIRVIEW PARK
ORDINANCE NO. 20-
REQUESTED BY: MAYOR PATRICK J. COONEY
SPONSORED BY: COUNCILWOMAN KING

AN ORDINANCE AMENDING SECTION 129.01(a) ENTITLED “COMPOSITION” OF CHAPTER 129 ENTITLED POLICE DEPARTMENT OF THE CODIFIED ORDINANCES OF THE CITY OF FAIRVIEW PARK AND DECLARING AN EMERGENCY

WHEREAS, Section 129.01(a) of the Codified Ordinances of the City of Fairview Park establishes the composition of the Police Department as One Chief, Four Lieutenants, Three Sergeants and not more than 21 patrol or police officers; and

WHEREAS, as part of the restructuring of the Police Department into 12 hour shifts for officers, it has been determined by the Mayor, Police Chief and City Council that it is in the best interest of the City to restructure the composition of the Police Department as hereinafter set forth.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FAIRVIEW PARK, COUNTY OF CUYAHOGA AND STATE OF OHIO:

SECTION 1. That Section 129.01 (a) entitled “Composition” which reads as follows:

129.01(a) COMPOSITION

- (a) The Police Department shall be composed of a Chief of Police, four Lieutenants of Police, three Sergeants of Police and not more than twenty-one patrol or police officers.

Be and the same is hereby amended to read as follows:

129.01(a) COMPOSITION

- (a) The Police Department shall be composed of a Chief of Police, three Lieutenants of Police, four Sergeants of Police and not more than twenty-one patrol or police officers. (Effective October 5, 2020)

SECTION 2. That Ordinance 06-13 passed on the 17th day of April, 2006 is hereby repealed effective October 5, 2020 as to the changes herein made.

SECTION 3. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION 4. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED:
APPROVED:

1st reading:
2nd reading:
3rd reading:

Michael P. Kilbane, President of Council

Patrick J. Cooney, Mayor

Liz L. Westbrooks, Clerk of Council

CITY OF FAIRVIEW PARK
ORDINANCE NO. 20 -
REQUESTED BY:
SPONSORED BY: COUNCILWOMAN KING
CO-SPONSORED BY: COUNCILMAN MINEK

AN ORDINANCE SUPPORTING A REQUEST FOR GRANT FUNDING TO THE NORTHEAST OHIO AREAWIDE COORDINATING AGENCY (“NOACA”) FOR THE SFY 2021 ENHANCED MOBILITY FOR SENIORS AND INDIVIDUALS WITH DISABILITIES SECTION 5310 GRANT PROGRAM (“PROGRAM”) TO PROVIDE FINANCIAL ASSISTANCE TO PURCHASE A SEDAN VEHICLE TO EXPAND SENIOR TRANSPORTATION SERVICES AND AUTHORIZING THE MAYOR TO ACCEPT ANY AWARDED GRANT FUNDS AND FILE ALL DOCUMENTS AND EXECUTE ALL AGREEMENTS NECESSARY TO RECEIVE ANY AWARDED GRANT FUNDS AND DECLARING AN EMERGENCY

WHEREAS, NOACA is the designated recipient of the Program, funded by the Cleveland Urbanized Area Federal Transit Administration (“FTA”), for the Cleveland Urbanized Area and is authorized to make grants to public bodies, private nonprofit organizations, and other eligible entities; and

WHEREAS, the Program provides eighty percent (80%) federal funds for capital projects to support alternatives to public transportation that assist seniors and individuals with disabilities, new or expanded transportation services, and alternatives that go beyond the requirements of the Americans with Disabilities Act (“ADA”) of 1990 for individuals with disabilities; and

WHEREAS, the City is requesting funding from NOACA in the amount of Fifteen Thousand Six Hundred Dollars (\$15,600) to purchase a sedan in order to expand its senior transportation services; and

WHEREAS, the Senior Life Department fleet is currently comprised of two (2) buses and one (1) van; and

WHEREAS, the purchase of a sedan will enable the Senior Life Department to increase its level of service and continue providing safe and convenient transportation services to the City’s senior citizens; and

WHEREAS, the Program is paid on a reimbursement basis, requiring the applicant to first expend funds then request reimbursement from NOACA, which will subsequently request the funds from the FTA; and

WHEREAS, the applicant certifies it will provide at least twenty percent (20%) local matching funds from sources other than federal Department of Transportation funds; and

WHEREAS, this project is included in the Coordinated Public Transit-Human Services Transportation Plan for Northeast Ohio; and

WHEREAS, the City of Fairview Park agrees to abide by federal requirements as a sub-recipient of FTA funds, including federal fiscal year 2015 Certifications and Assurances inclusive of provisions of Title VI of the Civil Rights Act of 1964, and all subsequent annual Certifications and Assurances during the length of the agreement, including federal procurement, maintenance, useful life, disposition standards, and ongoing reporting; and

WHEREAS, the City of Fairview Park is authorized to execute a contract with NOACA if selected for the Program.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FAIRVIEW PARK, COUNTY OF CUYAHOGA AND STATE OF OHIO:

SECTION 1. That the Council of the City of Fairview Park hereby supports the City's request for funding to purchase a sedan for use by Senior Life Department for the transportation of seniors.

SECTION 2. That the total project cost will not exceed Nineteen Thousand Five Hundred Dollars (\$19,500), of which the City is requesting Fifteen Thousand Six Hundred Dollars (\$15,600) (80%) in grant funding and providing a local match not to exceed Three Thousand Nine Hundred Dollars (\$3,900), or 20% of the total cost.

SECTION 3. That all costs will be paid on a reimbursement basis out of the Permanent Improvement Fund (Fund 260) or Senior Life Donation Fund (Fund 761).

SECTION 4. That the Mayor and City Administration are authorized to file all documents and execute all agreements necessary to accept the award and receive any grant funds; and that the funds are appropriated solely for purposes described in this Ordinance.

SECTION 5. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION 6. That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of public peace, health, safety and welfare; and for the further reason that supportive legislation must be submitted to NOACA by September 4, 2020; and provided it received an affirmative vote of a majority plus one of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise from and after the earliest period allowed by law.

PASSED:
APPROVED:

1st reading:
2nd reading:
3rd reading:

Michael P. Kilbane, President of Council

Patrick J. Cooney, Mayor

Liz L. Westbrooks, Clerk of Council



CITY OF FAIRVIEW PARK

20777 Lorain Road
Fairview Park, Ohio 44126-2018
- Established in 1910 -

Patrick J. Cooney, Mayor

MEMORANDUM

TO: Council President Kilbane and Members of City Council

FROM: Mayor Patrick J. Cooney

RE: Emergency Legislation – 2020 Enhanced Mobility for Seniors and Individuals with Disabilities (Section 5310) Grant Program

DATE: August 7, 2020

The Administration of the City of Fairview Park is requesting suspension of the rules requiring three (3) readings and passage of the following legislation with one (1) reading on Monday, August 17, 2020 as an emergency:

ORDINANCE 20 -__ AN ORDINANCE SUPPORTING A REQUEST FOR GRANT FUNDING TO THE NORTHEAST OHIO AREA WIDE COORDINATING AGENCY (“NOACA”) FOR THE SFY 2021 ENHANCED MOBILITY FOR SENIORS AND INDIVIDUALS WITH DISABILITIES SECTION 5310 GRANT PROGRAM (“PROGRAM”) TO PROVIDE FINANCIAL ASSISTANCE TO PURCHASE A SEDAN VEHICLE TO EXPAND SENIOR TRANSPORTATION SERVICES AND AUTHORIZING THE MAYOR TO ACCEPT ANY AWARDED GRANT FUNDS AND FILE ALL DOCUMENTS AND EXECUTE ALL AGREEMENTS NECESSARY TO RECEIVE ANY AWARDED GRANT FUNDS AND DECLARING AN EMERGENCY

The Administration respectfully requests passage of this ordinance on first read to allow for the submission of supportive legislation to NOACA by the September 4, 2020 deadline and to enable the City to continue advancing the Senior Life Department’s Senior Transportation Program. The proposed sedan will provide a cost effective, environmentally friendly, and safe single-rider transportation option to senior citizens and disabled individuals living within this community – many of whom are reliant on the Senior Transportation Program for mobility and independence.

cc: Mary Kay Costello, Director of Public Service & Development
Timothy Riley, Law Director
Laura Brondos, Interim Senior Life Director
Liz Westbrooks, City Council Clerk
Greg Cingle, Finance Director