



**To:** Members of Dublin City Council

**From:** Marsha I. Grigsby, City Manager */mac*

**Date:** June 19, 2014

**Initiated By:** Michelle L. Crandall, Assistant City Manager  
Brian Ashford, Facilities Manager

**Re: Resolution 55-14- Authorizing an Equipment Lease Agreement with  
Dublin Advanced Energy Partners, Ltd**

## Summary

For the past several months, City staff has been working with representatives from IGS Energy and Hull & Associates, both Dublin-based firms, to negotiate a lease agreement for the installation of a combined heat and power (CHP) unit at the Dublin Community Recreation Center (DCRC). IGS and Hull & Associates have formed Dublin Advanced Energy Partners, Ltd. (DAEP) with plans to expand this business concept, using Dublin as a demonstration site for potential clients. A more detailed memorandum and information providing a description of the Combined Heat and Power system, along with the proposed 15-year equipment lease, was included in Council's June 9 Council packet (attached).

If approved by City Council, the proposed lease agreement would provide a small savings on the City's current electricity rates (approximately 8.3 cents per kWh versus the approximate 8.4 cents per kWh that the City is currently paying). However, these savings are expected to grow over time due to the fact that the lease rate is frozen for five years, while electricity rates will likely increase. A major benefit of this technology will be the ability to utilize the "waste" heat from the engine to assist in providing the hot water needed to heat much of the DCRC in the winter and the pools year round. Additionally, the boilers will not need to run as long, which will result in an undetermined savings on natural gas costs. The City will also save approximately \$60,000 in capital costs with one of the three boilers scheduled to be replaced no longer being needed.

## Recommendation

Staff recommends approval of Resolution 55-14 authorizing the City Manager to execute an equipment lease agreement with Dublin Advanced Energy Partners, Ltd.

# RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc., Form No. 30045

**55-14**

Resolution No. \_\_\_\_\_

Passed \_\_\_\_\_, 20\_\_\_\_

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN EQUIPMENT LEASE AGREEMENT BETWEEN THE CITY OF DUBLIN AND DUBLIN ADVANCED ENERGY PARTNERS, LTD.**

**WHEREAS**, Dublin Advanced Energy Partners, Ltd. is willing to design, construct, install, own, maintain and lease to the City certain equipment (a combined heat and power unit), which will simultaneously produce electric and thermal energy for the Dublin Community Recreation Center (DCRC); and

**WHEREAS**, the use of combined heat and power is considered by the U.S. Department of Energy and the U.S. Environmental Protection Agency to be a highly efficient, clean and green approach to generating electrical power and capturing wasted thermal energy; and

**WHEREAS**, the City desires to continue its energy efficiency efforts by entering into an Equipment Lease, attached hereto as Exhibit A with Dublin Advanced Energy Partners, Ltd.

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Dublin, State of Ohio, \_\_\_\_\_ of the elected members concurring that:

Section 1. The City Manager is hereby authorized to execute the attached Equipment Lease with Dublin Advanced Energy Partners, Ltd. for the design, construction, installation and lease of certain equipment, which will simultaneously produce electric and thermal energy for the Dublin Community Recreation Center.

Section 2. This Resolution shall take effect upon passage, in accordance with Section 4.04(a) of the Revised Charter.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Mayor – Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of Council



City of Dublin

Office of the City Manager  
5200 Emerald Parkway • Dublin, OH 43017-1090  
Phone: 614-410-4400 • Fax: 614-410-4490

# Memo

**To:** Members of Dublin City Council

**From:** Marsha I. Grigsby, City Manager 

**Date:** June 5, 2014

**Initiated By:** Michelle L. Crandall, Assistant City Manager  
Brian Ashford, Facilities Manager

**Re:** Combined Heat and Power Unit at the Dublin Community Recreation Center

## Summary

For the past several months, City staff has been working with representatives from IGS Energy and Hull & Associates, both Dublin-based firms, to negotiate a lease agreement for the installation of a combined heat and power (CHP) unit at the Dublin Community Recreation Center (DCRC). IGS and Hull & Associates have formed Dublin Advanced Energy Partners, Ltd. (DAEP) with plans to expand this business concept, using Dublin as a demonstration site for potential clients. A draft of the agreement and a power point overview are attached for Council's review. This agreement will be brought forward to Council as a resolution at the June 23 Council meeting.

The following is a summary of the technology and the proposed agreement.

### Combined Heat and Power Systems

A combined heat and power system provides for the generation of electricity and usable thermal energy via one fuel source. The unit planned for installation at the DCRC would be fueled by natural gas and would produce 248kW of electricity/hour, providing 60% of the building's power needs. Additionally, the thermal energy expended by the unit would be captured and used to pre-heat the water used in the building's boilers, which primarily heat the swimming pools. This would reduce boiler operation time, as well as reduce maintenance of the boilers and extend their replacement life-cycle. Finally, the system will continue running when there is a loss of grid power, allowing for continued use of most of the facility during power outages.

Combined heat and power is considered by the U.S. Department of Energy and the U.S. Environmental Protection Agency to be a highly efficient, clean and green approach to generating electrical power and capturing otherwise wasted thermal energy. An August 2012 report co-authored by these two agencies cites that the "average efficiency of power generation in the United States has remained at 34 percent since the 1960s." The CHP unit planned for installation in the DCRC has an estimated energy efficiency of 90%.

### Equipment Lease

The proposed equipment lease would be for a 15-year period. The lease is based upon the equipment's actual kilowatt hours produced. During the first five years of the agreement, the rate is set at \$12.5215/KWh. Assuming an annual equipment operation of 8,232 hours, the lease for the first five years would be \$8,589.74/month (\$103,077 annually). Years 6-15 of the agreement would include an annual escalating increase of 3%. Appendix 3 of the attached draft agreement shows the detailed calculations of the estimated lease rates. The City would only pay for the

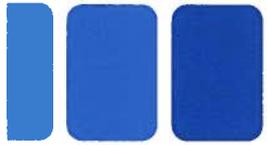
annual kilowatt hours generated, which will be tracked by a meter mounted to the CHP unit. Should the equipment not operate for the full 8,232 hours anticipated or at the capacity estimated, the lessor would issue a capacity adjustment against the affected year's invoice at the end of the year. At the conclusion of the 15-year lease, the City would have the option to purchase the system, extend the lease or request that the equipment be removed at the owner's expense. DAEP would be responsible for the installation, operation and maintenance of the system during the entire 15 years of the agreement.

Direct energy cost savings are estimated to be \$19,046 for the first five years of the agreement. Other indirect savings include that the City would not need to replace an existing boiler that is planned for replacement in 2015 (at an estimated cost of \$69,046) and the City would not need to invest in an additional generator to provide back-up power during power loss (at an estimated cost of \$100,000). While the overall energy cost savings do not appear to be dramatic, this investment provides a solution that is much more energy efficient and uses natural gas as the source fuel, which is a cleaner fuel with lower emissions.

In addition to IGS Energy and Hull & Associates, other Dublin-based companies involved with this project include Prater Engineering, Kinetics Noise Control and Air Force One. The City of Dublin CHP unit will be the first installation of this type in Central Ohio. More than 50 CHP units are installed in manufacturing, university, museum and military facilities throughout Ohio.

### **Recommendation**

For information only. Should you have questions regarding this memorandum, please contact Michelle Crandall at 410-4403 (desk) or 206-4886 (mobile).



**City of Dublin**

**Combined Heat and Power (CHP)  
Project**

**May. 27<sup>th</sup>, 2014**

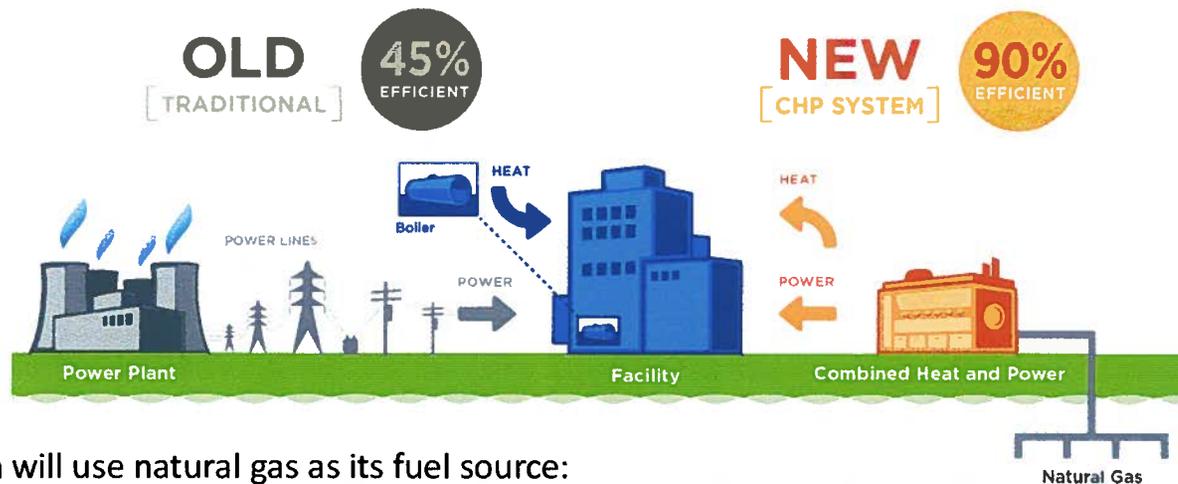


# Agenda

- Project Summary
- Value of CHP System to the City
- CHP Equipment Lease Agreement
- Project Responsibilities
- Next Steps

# Project Summary

- A Combined Heat & Power (CHP) System will be installed at the Dublin Community Recreation Center (“DCRC”)
  - IGS Generation & Hull & Assoc., dba *Dublin Advanced Energy Partners* (“DAEP”), will design, build, own and maintain the new CHP facility.
- What is a CHP System?
  - System that produces electricity and usable thermal energy via the same input fuel source.



- The system will use natural gas as its fuel source:
  - Produce 248kW of electricity per hour, totaling 60% of the building’s power needs.
  - Provide 1.5 million BTU of thermal energy per hour totaling 50% of the building’s heating needs, primarily serving the heated swimming pools.
  - Total system efficiency over 90%.

# ■ ■ ■ CHP Provides Backup Power

- The CHP system is enabled to run in “island mode”
- The system will be able to continue running when there is a loss of grid power
- This enables DCRC to continue using the building for emergency operations during power outages



# Local Project Development Team

- Hull & Associates – Dublin-based project developer and 50% owner
- IGS Energy – Dublin-based project developer and 50% owner
- WW Williams – Local CHP system vendor (MTU Onsite Power)
- Prater Engineering – Dublin-based CHP facility design/engineering
- Kinetics Noise Control – Dublin-based CHP system enclosure
- Settle-Muter Electric – Local electrical contractor
- Air Force One – Dublin-based mechanical contractor

# ■ ■ ■ Significant Value to the City of Dublin



## Immediate cost savings

- Eliminates need for a boiler replacement, saving nearly \$50,000
- CHP system installed by Hull/IGS at no cost



## Protection against rising energy costs

- Long-term lease agreement provides price stability for 15 years.
- Projected to save DCRC over \$260,000 in utility bills over 15 years



## Grid Resiliency

- System provides backup power during grid outage – saving \$100,000 over installing a similar sized backup generator



## Green energy solution

- Aligns with City's vision for the future: It's Greener in Dublin
- Annual Savings:
  - 187 cars taken off the road
  - 7 acres of forest preserved
  - 126 homes of CO2 emissions
  - 900 tons of CO2 removed



# CHP Saves DCRC on 5 Year Energy Costs

<b>Bills Years 1 – 5 Without CHP</b>	
AEP Charges	\$884,360
Columbia Charges	\$303,737
<b>Total</b>	<b>\$1,188,097</b>
<b>Bills Years 1 – 5 With CHP</b>	
DAEP Charges	\$504,567
Columbia Charges	\$664,484
<b>Total</b>	<b>\$1,169,051</b>
<b>5 Year Utility Savings</b>	<b>\$19,046</b>
<b>5 Year Savings Including Boiler</b>	<b>\$69,046 *</b>
<b>Including Backup Gen Solution</b>	<b>\$169,046 **</b>

\*Assumes \$50,000 boiler value

\*\*Assumes \$100,000 backup solution value



# CHP Saves DCRC on 15 Year Energy Costs

<b>Bills Years 1 – 15 Without CHP</b>	
AEP Charges	\$3,126,086
Columbia Charges	\$1,064,049
<b>Total</b>	<b>\$4,190,135</b>
<b>Bills Years 1 – 15 With CHP</b>	
DAEP Charges	\$1,696,132
Columbia Charges	\$2,233,704
<b>Total</b>	<b>\$3,929,836</b>
<b>5 Year Utility Savings</b>	<b>\$260,299</b>
<b>5 Year Savings Including Boiler</b>	<b>\$310,299 *</b>
<b>Including Backup Gen Solution</b>	<b>\$410,299 **</b>

\*Assumes \$50,000 boiler value

\*\*Assumes \$100,000 backup solution value

# Long-Term Lease Agreement

- The DCRC and DAEP will enter into a 15-year CHP System Lease Agreement
  - DCRC utilizes all of the electricity and thermal energy generated by the CHP system
  - City pays an hourly rate for the use of the CHP system.
  - DAEP will provide a monthly invoice based on the total CHP run hours for the previous month.
  - The first 5 years of the contract will have a fixed hourly rate, then rates escalate 3% annually until the end of the 15-year term.
  - At the end of the initial term the DCRC will have the options to:
    - Purchase the system
    - Extend the contract
    - Request equipment to be removed at owner's expense.



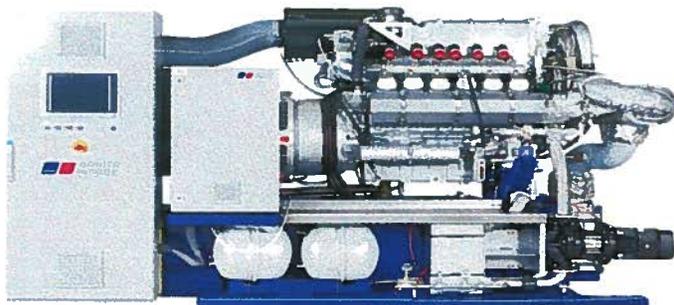
# Project Responsibilities

- Operations
  - DAEP will be responsible for installation, operation and ongoing maintenance of the CHP system for 15 years.
  - The CHP system will be equipped with remote monitoring which will be managed by DAEP.
  - The DCRC will always remain grid connected. In the event the CHP system is unavailable, the system will revert to how it operates today:
    - Electricity required will be supplied from the grid (AEP).
    - Boilers will supply all the heat and simply operate at a higher load
- Financial Obligations
  - DAEP is responsible for all capital investment and maintenance costs.
  - DCRC is responsible to pay an hourly rate for the leased equipment, unless the system is unavailable outside of its control.

# Location of CHP System



- Installed in the dumpster area of DCRC, north of chiller systems
- Installed in noise-reducing enclosure to minimize sound to visitors
- Kiosk inside DCRC being considered to provide educational opportunities for visitors



MODEL OF CHP SYSTEM



FINAL DRAFT

Equipment Lease

Between

Dublin Advanced Energy Partners, Ltd.

And

City of Dublin, Ohio

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**APPENDIX**

1. EQUIPMENT, SPECIFICATIONS AND MINIMUM OUTPUT REQUIREMENTS OF SYSTEM
2. LICENSED AREA
3. RENT SCHEDULE/CAPACITY REDUCTION CREDIT



## **EQUIPMENT LEASE**

This Equipment Lease (the "Lease") is entered into as of February \_\_\_ 2014 (the "Execution Date"), by and between City of Dublin ("Lessee"), and Dublin Advanced Energy Partners, Ltd., an Ohio limited liability company ("Lessor") (together, the "Parties").

### **RECITALS:**

**WHEREAS**, Lessor is willing to design, construct, install, own, maintain, and lease to Lessee certain equipment ("Equipment," the major components of which are as more particularly described below and in Appendix 1) which will simultaneously produce electric and thermal energy for Lessee; and

**WHEREAS**, Lessee owns and operates a facility located at 5600 Post Road, Dublin, Ohio 43017, and wishes to lease Lessor's Equipment on its Facilities for purposes of satisfying a portion of Lessee's electricity and thermal energy requirements; and

**WHEREAS**, using natural gas as a fuel source, this Equipment will produce electric and thermal energy and deliver such electricity and thermal energy to Lessee's on-premises electricity distribution network and hot water network respectively; and

**WHEREAS**, Lessor wishes to lease to Lessee, and Lessee wishes to lease from Lessor the Equipment at the rent set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

### **ARTICLE 1**

#### **DEFINITIONS**

The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this Lease, whether in the singular or the plural or in the present or past tense. Other terms used in this Lease but not listed in this Article shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice.

**"Affiliate"** means any other person or entity that controls, is under the control of, or is under common control with, the named entity.

**"Business Day"** means any day except a Saturday, Sunday or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business.

**"Capacity Reduction Credit"** means the credit in an amount calculated according to the formula set forth on Appendix 3.

**“Communications and Telemetry Equipment”** is the telemetering, communications, and data acquisition equipment that is necessary for the effective operation of the Equipment within any applicable regulations and requirements of the transmission provider in addition to those required by any Interconnecting Utility. The Communications and Telemetry Equipment may include communication and data transmission (telemetering) facilities operable from any single location designated by Lessee, from time to time (in addition to those required by the Interconnecting Utility).

**“Completion Date”** means the date when System Completion has occurred and Lessor has delivered Notice to Lessee of the same.

**“Debt”** means the full obligations of Lessor under any loan, credit agreement, note, bond, mortgage or other financing or refinancing document with a lender, including, without limitation, any mortgagees or lessees in the case of lease financing.

**“Default”** has the meaning set forth in Article 7 below.

**“Electric Energy”** means the electrical power measured in kilowatt hours (“kWh”) and capacity generated from the Equipment over the proposed Term, consistent with the specifications and Minimum Output Requirements set forth in Appendix 1.

**“Emergency”** means any abnormal interconnection or system condition including, but not limited to, equipment or transmission limitations and constraints caused by thermal limits, stability, voltage, or loop flows that the transmission provider, Interconnecting Utility, or Lessee determines, in its sole discretion (exercised in accordance with Good Utility Practices) requires automatic or immediate manual operation to prevent or limit loss or damage to the Facilities or generation supply, any interconnected electric system, or could otherwise pose a threat to public safety.

**“Energy”** means, collectively, the Electrical Energy and Thermal Energy.

**“Environmental Attributes”** means all environmental, economic, and other related credits, emissions credits, Renewable Energy Certificates, allowances, state, federal or local tax credits, air emissions credits, and emissions reductions credits, offsets, allowances or benefits that are attributable to the capacity of the System and the Energy generated during the Term. Environmental Attributes includes not only the described credits, offsets, allowances, or benefits that are now available, but also those that may become available in the future for Energy generated by the Equipment during the Term.

**“Equipment”** means a cogeneration facility owned by Lessor and located on Lessee’s Facilities as described in further detail at Appendix 1 and built and maintained in accordance with this Lease. Equipment includes without limitation the generator, gas conditioning equipment, step-up transformers, electric energy collection network, output breakers, inverters, power lines, pipes, pumps, plumbing, heat exchangers and any other tangible assets, land rights and contract rights obtained by Lessor that are reasonably necessary for the construction and maintenance of the Equipment that produces and delivers to Lessee Energy under this Lease.

**“Equipment Hours”** means, with respect to the Equipment, the total number of hours the Equipment was used by Lessee in the production of Energy during any period of time.

**“Facilities”** means Lessee's real property located at 5600 Post Road, Dublin, Ohio 43017, and all fixtures and personal property located thereon including, without limitation, all wiring, meters, service panels, boiler, pipes, pumps and plumbing and other related equipment, components or devices existing on Lessee's side of the Point of Delivery, including the AC disconnect box through the end use in Lessee's facility, as may be repaired, upgraded or replaced, through the Term of this Lease.

**“Force Majeure”** means an event or circumstance or combination of events or circumstances beyond the reasonable control of the Party claiming the Force Majeure, including, but not limited to acts of God; strikes, lockouts, and/or violent labor disputes; terrorism, sabotage, war or riots; explosions; severe cold or hot weather or other extreme weather conditions; other actions of the elements such as floods, earthquakes, lightning or hurricanes. Notwithstanding the foregoing, Lessor shall prepare and, if necessary, implement contingency plans allowing for continued operation of the Equipment during strikes or labor disputes involving Lessor or any contractor or sub-contractor selected by Lessor.

**“Forced Outage”** means any condition resulting from immediate mechanical, electrical or hydraulic control system trips or operator-initiated trips in response to System conditions or alarms at the System that requires immediate removal of the Equipment, or some part thereof, either from service, another outage state, or a reserve shutdown state.

**“Good Utility Practice(s)”** means the standard of care required to be exercised by Lessor based on the practices, methods, and acts that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practice is not intended to be limited to the optimum practice or method to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

**“Interconnection Agreement”** means the agreement between Lessee and the Interconnecting Utility, if any, which relates to this Equipment and has been prepared by the Lessor and reviewed and approved by the Lessee.

**“Interconnecting Utility”** means AEP Ohio, or any other utility or corporation that provides electrical power to the area where Lessee is located to the extent that performance of the Lease involves such an interconnection. For purposes of this Lease, “Interconnecting Utility” also means PJM Interconnect LLC, or any successor entity.

**“Interconnection Facilities”** means all of the facilities, if any, installed by Lessor for the purpose of interconnecting the Equipment to the Interconnecting Utility's system including, without limitation, transformers and associated equipment, relay and switching equipment, and safety equipment, all as more fully described in the Interconnection Agreement.

**“Interest Rate”** means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

**“Laws”** means all applicable national, state or local laws of the United States of America or any political subdivisions thereof including statutes, regulations, by-laws, ordinances, codes, and instructions of governmental or local authorities and related consents, approvals, licenses or permits applicable to the System.

**“Lease”** has the meaning stated in the introductory paragraphs of this Lease and includes all Exhibits attached hereto.

**“Licensed Area”** means the area within the Facilities where the System is located and such surrounding areas and ingress and egress as are reasonably necessary for Lessor to install and maintain the System as specified in the site plan which has been designated as Appendix 2 to this Lease.

**“Metering Equipment”** means any meters and appurtenances thereto to measure the Electric Energy produced by the Equipment and delivered to Lessee. Such meters shall be utility grade meters.

**“Minimum Output Requirements”** means the minimum Electric Energy and Thermal Energy required to be produced by the System as further described on Appendix 1 to this Lease.

**“Notice”** means a written communication delivered to the other Party at a location and through verifiable means as specified in Article 10.

**“Operating Records”** means the System operating logs, blueprints for construction of the System, invoices for all Equipment components comprising the System, all operating manuals, all warranties on Equipment, and all other documents and agreements associated with the System, whether in printed or electronic format, that the Lessor uses or maintains for the System.

**“Party” or “Parties”** has the meaning stated in the introductory paragraph of this Lease.

**“Point of Delivery”** means the point of interconnection where Electric Energy and Thermal Energy are discharged from the Equipment or at such other point as the Parties, from time to time, may agree to in writing.

**“System”** means the Equipment, Metering Equipment, Point of Delivery, and connection to the Interconnection Facilities.

**“System Completion”** shall occur when (i) the System is constructed in accordance with Good Utility Practices and is available to receive and deliver Energy from the Equipment; and (ii)

approvals have been received that are required by the Federal Energy Regulatory Commission or the Public Utilities Commission of Ohio, if any, for the System to deliver Energy.

“**Tariff Schedule**” means the schedule for Electric Energy utilized by the Lessee from its Interconnecting Utility.

“**Taxes**” means federal, state and local taxes of whatever kind, including, without limitation, sales, use, kilowatt-hour, excise, property, governmental charges, licenses and fees.

“**Term**” shall have the meaning set forth in Article 5 hereof.

“**Thermal Energy**” means the thermal energy measured in British thermal units (“Btu”) generated from the production, sale and delivery from the Equipment to Lessee over the proposed Term, consistent with the specifications and Minimum Output Requirements set forth in Appendix 1.

## ARTICLE 2

### DESCRIPTION OF SYSTEM

#### 2.1 GENERAL DESCRIPTION OF SYSTEM

**2.1.1 System.** The System has been or will be designed by Lessor as a 248 kW cogeneration facility using natural gas as its fuel source. Lessor shall own the Equipment and maintain the System to purposefully meet the obligations established by this Lease. Lessee shall have no ownership interest in or duty to maintain and repair the System.

**2.1.2 Detailed Designs Subject To Approval.** Lessor shall provide detailed designs of the System to Lessee for approval, which shall not be unreasonably withheld or delayed.

**2.1.3 Selection of Contractors.** Lessor shall utilize qualified contractors and sub-contractors for the design, construction, and maintenance of the System. All such contractors and sub-contractors shall be required by Lessor to follow Lessee’s health and safety rules and Lessee’s security procedures, and unless Lessor grants a waiver in writing, all contractors and sub-contractors shall be required by Lessor to maintain the same levels and types of insurance specified herein for Lessor. Lessor shall indemnify and save Lessee harmless against any claims made by a supplier as a result of the supplier’s interaction with Lessor.

**2.1.4 Point Of Delivery.** The Point of Delivery shall be the points of direct interconnection with Lessee’s facility for Electric Energy and Thermal Energy as agreed upon by the Parties, and more particularly described in Appendix 1. Lessor shall install the Metering Equipment such that there will be one meter at the Point of Delivery to measure Electric Energy generated by the Equipment, and Lessor will coordinate with the Interconnecting Utility to ensure the installation of equipment required by the Interconnecting Utilities’ net metering agreement.

## **2.2 LOCATION**

All components of the System, including but not limited to, the Equipment, the generator, the gas conditioning equipment, and the power lines, shall be constructed within the Licensed Area. If any of these locations are determined by Lessor or Lessee to be technically unfeasible, the Parties shall select a modified location through mutual agreement and shall amend the Licensed Area set forth on Appendix 2.

## **ARTICLE 3**

### **SYSTEM REQUIREMENTS**

#### **3.1 INSTALLATION OF SYSTEM**

Lessor agrees to design, construct, install, maintain and operate the System within the Licensed Area in accordance with Good Utility Practices and achieve System Completion on or before the Completion Date. Lessor shall use reasonable commercial efforts to ensure that the necessary construction work does not interfere with Lessee's ongoing operations at this facility.

#### **3.2 PRODUCTION OF ENERGY**

Lessor represents and warrants that the upon System Completion, the System will provide the Minimum Output Requirements of Electric Energy and Thermal Energy in any year during the Term equal to the minimum amounts set forth in Appendix 1. Subject to Section 6.1.7, in the event the System fails to meet the Minimum Output Requirements for more than twenty-four (24) hours for reasons other than Force Majeure, then Lessor shall be entitled to a Capacity Reduction Credit.

#### **3.3 STATUS REPORTS**

Lessor shall provide monthly status reports to Lessee on or about the first day of each month regarding the construction of the System beginning in the month following the Execution Date of this Lease and continuing until the Completion Date. These status reports shall describe the work that has been completed in the preceding month, the work that is scheduled for the upcoming month and any delays which may cause the System Completion to occur after the Completion Date.

#### **3.4 LICENSE**

Lessee hereby grants to Lessor, its specified agents and specified contractors a license, for the Term of this Lease, to enter upon, use and occupy the Licensed Area for the purpose of construction, installation, repair, and maintenance of the System subject to Lessee's superior rights to occupy, use and enjoy all of Lessee's Facilities.

**3.4.1 Lessor's use of License.** Lessor may not use or allow the use of the Licensed Area for any purpose other than design, construction, repair, and maintenance of the System in accordance with this Lease. Lessor and its agents and contractors will comply with all commercially reasonable rules and regulations adopted by the Lessee for the Facilities,

including, but not limited to, rules and regulations governing use of firearms, alcohol, or illegal drugs.

**3.4.2 Interference with Uses.** Lessor shall not create or permit any nuisance in the Licensed Area nor unreasonably obstruct or interfere with Lessee's use of its Facilities and shall operate the System so as to minimize any interference with the Lessee's use of the Facilities. Lessee may construct, re-construct or modify Lessee's Facilities so long as such activities do not unreasonably interfere with Lessor's property use rights as described herein.

**3.4.3 Condition of Licensed Area.** Lessor shall inspect the Licensed Area and may utilize such experts as the Lessor may choose and at Lessor's expense. Lessee shall cooperate with any studies or inspections as required to assure that the Licensed Area is in a suitable condition for placement and operation of the System and shall promptly remedy any deficiencies, subject to Lessor's prior consent and approval.

## ARTICLE 4

### RENT AND PAYMENT TERMS

#### 4.1 RENT

**4.1.1 Annual Estimation of Equipment Hours and Rent.** Lessor and Lessee shall mutually agree on an estimate of the total Equipment Hours used for the Equipment during each calendar year of the Term, as more fully detailed in the attached Appendix 3 (the "Rent"), and Lessee shall pay said Rent in equal monthly installments in advance. Notwithstanding anything to the contrary herein, the Lessor and Lessee agree that the Equipment Hours and corresponding rates may be adjusted based on actual amount of Electric Energy and Thermal Energy produced by the System pursuant to Section 3.2.

**4.1.2 Adjustment to Rent Based on Actual Equipment Hours.** In the event that the estimated Equipment Hours is less than the actual Equipment Hours utilized, calculated as of the last day of each calendar year, then the resulting deficiency in Rent otherwise due by Lessee shall be paid to Lessor within 30 days after demand therefor. In the event that the estimated Equipment Hours is more than the actual Equipment Hours utilized, calculated as of the last day of each calendar year, then the resulting excess in Rent shall be credited against Lessee's estimate of Rent due in the following calendar year beginning with the first month and continuing in each successive month until the amount of said excess is entirely credited; provided, however, if the excess occurs in the last year of the Term, then at Lessee's sole option, Lessor shall either (i) pay such amount directly to Lessee, (ii) credit such excess against the estimated Rent for the first year of the extension term pursuant to Section 5.5.1(a) or (iii) credit such excess against the Lessee's cost of the Equipment pursuant to Section 5.5.1(b).

**4.1.3 Annual Statement.** Within 30 days following the end of each calendar year, Lessor shall provide to Lessee a certified statement (the "Statement") showing: (i) the actual number

of Equipment Hours incurred by Lessee with respect to the Equipment during such calendar year, and (ii) the amount of Rent paid by Lessee during such calendar year.

**4.1.4 Lessor's Records.** Lessor shall maintain, for a period of three years, records of the Metering Equipment upon which the number of Equipment Hours are calculated each calendar year. Upon giving Lessor reasonable prior notice, Lessee shall have the right to examine such records during the normal business hours of Lessor at the place where such records are kept. If Lessee reasonably takes exception to any matter contained in the Statement, then Lessor and Lessee shall refer the matter to a mutually acceptable certified public accountant ("CPA"), whose certification as to the proper amount shall be final and conclusive between Lessor and Lessee. Lessee shall promptly pay the cost of the CPA's certification unless such certification determines that the actual amount of rent charged by Lessor was in error to Lessee's detriment by five percent or more, in which event Lessor shall pay the cost of such certification by CPA.

## **4.2 ENVIRONMENTAL ATTRIBUTES, OTHER INCENTIVES, AND TAXES**

**4.2.1 Environmental Attributes and Other Incentives.** Environmental Attributes that may result from or be associated with the System, the Electric Energy, Thermal Energy, or this Lease shall in all cases accrue to and be the sole property of Lessor. All incentives paid from the applicable natural gas or electric utility through any energy efficiency, demand side management, or other similar program and related to or arising from the use of the Equipment under this Lease will be accrued to and shared equally by the parties as follows: Lessor 50%, Lessee 50%.

**4.2.2 Taxes.** Each Party shall use reasonable efforts to administer this Lease in a manner that will minimize the imposition of Taxes. Lessee is responsible for paying all applicable Taxes related to this Lease and operation of the Equipment, except for income tax based on Lessor's revenue. Lessor will assess, collect, and remit any applicable kilowatt-hour tax; Lessor will show the kilowatt-hour tax as a separate line item on its monthly invoice to Lessee.

## **4.3 BILLING AND PAYMENT**

**4.3.1 Invoices.** Lessor shall provide to Lessee a monthly invoice that specifies during such period (a) the quantity of Equipment Hours, (b) with respect to the Minimum Output Requirement, the (i) estimated kWh production, (ii) actual kWh production, (iii) year-to-date kWh production vs. estimated kWh production, and (c) the total amount of Rent due and owing by Lessee. Lessee shall pay Lessor not later than thirty (30) days after receipt by the Lessee of the Lessor's invoice the amount of Rent due as reflected in Lessor's monthly invoice. If the due date is not a Business Day, then Lessee's payment is due the next Business Day.

**4.3.2 Payments.** Without limiting Lessor's other remedies for a breach of this provision, payment made more than thirty (30) business days after Notice from Lessor shall be subject to an Interest Rate. In the event of partial payment of the invoice, the Interest Rate shall

apply only to the unpaid balance. Lessee shall make such payment by wire transfer or ACH to an account specified in writing by Lessor.

**4.3.3 Invoice Errors.** Either Party may, within one year of any due date of a monthly invoice, provide Notice to the other Party of an alleged error in such monthly invoice. If within such one (1) year period, Lessor or Lessee does not provide Notice to the other Party of an alleged error in the monthly invoice of which Lessor or Lessee is aware or should be aware, Lessor or Lessee shall be deemed to have waived any error in the monthly invoice and such monthly invoice shall be considered correct and complete. In circumstances of disagreement, Lessor and Lessee shall meet within fifteen (15) days after receipt of Notice from the other Party to resolve such disagreement. If within thirty (30) days after such initial meeting the Parties are unable to resolve the disagreement, the matter shall be resolved in accordance with the dispute resolution procedures set forth in Article 11.

## **ARTICLE 5**

### **TERM OF LEASE AND TERMINATION**

#### **5.1 TERM**

The Term of this Lease commences on the Execution Date and shall continue for fifteen (15) full years from the Completion Date (the "Term"), unless otherwise extended or terminated by the provisions of this Lease.

#### **5.2 SCHEDULE OF CONSTRUCTION**

Lessor agrees that the Completion Date shall occur no later than 24 months from the Execution Date unless otherwise agreed by the Parties in writing. In the event that the System Completion does not occur within 24 months of the Execution Date, then Lessee may terminate this Lease upon thirty (30) days' notice to Lessor and Lessor shall, thereafter, assert no claims against Lessee or have any rights under this Lease.

#### **5.3 FORCE MAJEURE**

If either Party is rendered wholly or partly unable to perform its obligations under this Lease because of Force Majeure, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected; provided that: the affected Party gives the other Party Notice of the occurrence within two (2) days after the affected Party's knowledge that an event constituting a Force Majeure; the suspension of the affected Party's performance is of no greater scope and of no longer duration than is required by the Force Majeure; the affected Party uses reasonable efforts to remedy its inability to perform; and the affected Party resumes performance of its obligations under this Lease as expeditiously as possible.

#### **5.4 DELAYS AND REMEDIES**

The Term of this Lease shall be extended day-for-day for the time period during which a Party is rendered wholly or partly unable to carry out its obligations under this Lease by a Force Majeure

event; provided, however, if the performance of this Lease by either Party is interrupted for more than six (6) consecutive months, then the other Party may terminate this Lease upon thirty (30) days Notice.

## **5.5 EXPIRATION OF TERM; EXTENSION; PURCHASE**

**5.5.1** No later than one (1) year prior to expiration of the Term and provided no default currently exists, the Parties shall meet and determine which of the following options Lessee shall pursue upon expiration of the Term:

- (a) Lessee may renew this Lease for a mutually acceptable second term;
- (b) Lessee may purchase the System for, and the residual value will be deemed to be, the sum of \$304,747; or
- (c) Lessee may terminate this Lease, subject to Section 5.5.2.

**5.5.2** In the event the Lessee terminates the Lease pursuant to Section 5.5.1 (c), the Lessor shall remove the System from Lessee's Facilities and restore Lessee's Facilities to substantially the same or better condition that existed prior to the Execution Date. Lessee shall not interfere with Lessor's ability to remove the System provided such removal does not interfere with Lessee's use of its Facilities. This removal work shall not begin until the Lease has expired and shall be completed within 120 days after such expiration.

## **ARTICLE 6**

### **OBLIGATIONS OF THE PARTIES**

#### **6.1 LESSOR'S OBLIGATIONS**

**6.1.1 Financing Condition.** Notwithstanding any other provision of this Lease to the contrary, Lessor's obligations under this Lease shall be wholly conditioned upon Lessor's ability to obtain adequate financing (in order to consummate the transaction contemplated under this Lease) within 120 days following the Execution Date, on terms and conditions satisfactory to Lessor. In the event that Lessor is unable to satisfy the foregoing condition (the "Financing Condition"), neither Party shall have any liability to the other Party under this Lease, and this Lease shall be of no further force or effect. Lessor shall give prompt written notice to Lessee in the event Lessor satisfies or fails to satisfy the Financing Condition.

**6.1.2 Permits and Licensing.** Lessor shall be responsible for acquiring all consents, approvals, permits and licenses necessary for the construction and operation of the System, including, without limitation, any assistance necessary to obtain zoning modifications that may be necessary to connect to the Interconnecting Utility. All Lessor applications for permits, licenses, consents, and approvals, all requests for zoning modifications, and all agreements with the Interconnecting Utility shall be subject to Lessee's approval, which may not be unreasonably withheld or delayed.

**6.1.3 Maintenance of System.** Throughout the duration of the Term, Lessor will maintain and keep the System in good condition and repair and working order such that it will operate in accordance with Good Utility Practices at its full design capacity and comply substantially with the performance specifications and Minimum Output Requirements.

**6.1.4 Inspection.** Lessor shall give Lessee reasonable advance Notice of any test or inspection of the System, and Lessee may observe the test and conduct its own tests, at Lessee's expense, to verify Lessor's procedures and results. During any inspection, Lessee shall conduct itself in such a manner that will not interfere with Lessor's operation of the Equipment. In the event the results of Lessee's tests indicate that the System is operating at less than the performance requirements set forth herein contrary to Lessor's tests, then Lessor shall reimburse Lessee's reasonable cost of such tests.

**6.1.5 Communications and Telemetry.** Lessor shall, at Lessor's expense, design, install, own, maintain, and control the Communications and Telemetry Equipment. Lessee may inspect and review Lessor's Communications and Telemetry Equipment upon reasonable Notice and during normal business hours and subject to compliance by Lessee with Lessor's safety guidelines and risk management procedures. Upon request, Lessor shall provide Lessee with real-time access to the data or other information available from the System at no cost to Lessee; provided, that the aggregate costs incurred by Lessor in providing such access shall not exceed an aggregate \$1,000.

**6.1.6 Electric Utility Standby Charges.** Lessor will reimburse Lessee for any standby charges assessed and collected by Lessee's electric utility as a result of the connection and operation of the System under this Lease.

**6.1.7 Failure to Operate; Inefficient Output.** In the event that:

- (a) the Equipment fails to operate in its entirety for more than twenty-four (24) hours, for reasons other than scheduled maintenance or Force Majeure, and Lessee is required to utilize the Interconnecting Utility for its additional Electric Energy needs, then Lessor shall reimburse Lessee for the increase in cost of Electric Energy arising from a change in the Tariff Schedule assigned by the Interconnecting Utility, if any, arising solely from Lessee's additional Energy requirements during the period of non-operation ("Additional Energy Costs"). Payment shall be determined following the re-commencement of operation of the Equipment and shall be due within thirty (30) days therefrom. If this Agreement is terminated pursuant to Section 7, then the calculation of Additional Energy Costs shall continue through the date of termination.
- (b) the Equipment operates but at less than the Minimum Output Requirements for reasons other than Force Majeure, then, Lessor will (i) issue a Capacity Reduction Credit to Lessee for the number of Equipment Hours that the Equipment operated at less than the Minimum Output Requirements and (ii) reimburse Lessee for any Additional Energy Costs arising from the failure

of the System to meet Minimum Output Requirements in accordance with Section 6.1.7(a).

## **6.2 LESSEE'S OBLIGATIONS**

**6.2.1 General.** Lessee shall, at Lessee's sole expense, maintain and operate Lessee's Facilities in a commercially reasonable manner throughout the Term and keep Lessee's in good order and repair.

**6.2.2 Protection of Facilities.** Lessee shall not do or permit to be done anything that will invalidate any fire, extended coverage or other insurance covering the System. Lessee shall comply with all state and federal laws related to the health and safety of persons and property and shall immediately upon discovery report any damage, loss or injury that may impact or endanger the System.

## **6.3 OBLIGATIONS OF BOTH PARTIES**

**6.3.1 Inspection.** Each party has the right, after forty-eight (48) hours advance Notice to the other party, at its sole expense and during normal business hours, to examine the applicable records of the other party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Lease. If requested, Lessor shall provide to Lessee copies of statements evidencing the quantities of Energy delivered to the Point of Delivery and quantities of excess output produced. If requested, Lessee shall provide to Lessor copies of statements from the Interconnecting Utility related to all charges and net metering credits.

**6.3.2 System Disconnect.** Except in the case of an Emergency, neither Party may disconnect the System from the Facilities without reasonable prior Notice to the other Party. Notice should be provided in writing at least ten (10) calendar days prior to any disconnection, unless such Notice is not practicable, in which case Notice should be reasonable in time and manner of delivery under the circumstances. In the event of an Emergency, either Party may disconnect the System immediately and provide Notice to the other Party as soon as practicable. Notice under this section does not constitute Notice of Default or any other Notice provided for in this Lease.

## **ARTICLE 7**

### **DEFAULT AND REMEDIES**

#### **7.1 DEFAULT**

Each of the following events shall constitute an "Event of Default" hereunder:

- (a) the failure to make any undisputed payment required pursuant to this Lease within ten (10) days of the date due;

- (b) the failure of any material representation or warranty made by a Party herein to be true and correct which failure is not cured within thirty (30) days after Notice thereof to such Party;
- (c) the failure of either Party to perform any of its material obligations under this Lease (other than as provided in Section 7.1(d), (e) or (f) below), which failure is not excused by Force Majeure or cured within thirty (30) days after Notice thereof to such Party;
- (d) in the case of Lessee, the occurrence, in Lessor's reasonable opinion, of a material adverse change in the financial condition of Lessee which is not cured within sixty (60) days after Notice thereof;
- (e) in the case of Lessor, a failure to operate and maintain the System in accordance with the terms of this Lease which is not cured within sixty (60) days after Notice thereof;
- (f) in the case of Lessor, a failure within a reasonable time period to achieve System Completion by the Completion Date or to repair or replace essential components of the Equipment, including, but not limited to, transformation equipment, the generator, the gas conditioning equipment, or the power lines linking the Equipment to the Lessee's Facilities, which is not cured within thirty 60 days after Notice thereof; or
- (g) the filing of a bankruptcy petition by a Party, or the filing of such a petition against a Party without the petition being vacated within ninety (90) days.

## **7.2 LENDER'S CURE PERIOD**

Notwithstanding any other provision of this Lease, Lessee shall allow Lessor's lenders or equity investors to cure Lessor's Event of Default by providing them with thirty (30) additional days following delivery of a Notice of Default provided Lessee determines, in its reasonable discretion, that any such lenders or equity investors can properly discharge the duties of Lessor.

## **7.3 REMEDIES UPON DEFAULT**

Unless otherwise limited by the terms of this Lease, in the Event of Default, the Parties shall have the right to pursue any one or more of the following remedies:

- (a) The non-defaulting Party may immediately suspend performance of its obligations under this Lease and withhold any payment due in respect of this Lease until the Event of Default has been cured in accordance with the terms of this Lease;
- (b) The non-defaulting Party may terminate this Lease and accelerate all amounts owing between the Parties; and
- (c) The non-defaulting Party may exercise any other remedy available at law or in equity.

In addition to the foregoing remedies, in the event of a termination of this Lease pursuant to Section 7.3, Lessor shall remove the System from Lessee's Facilities and restore Lessee's Facilities to the substantially the same or better condition that existed on the Execution Date. Lessee shall not interfere with Lessor's ability to remove the System provided such removal does not interfere with Lessee's use of its Facilities. The removal work shall not begin until the Lease has been terminated and shall be completed within ninety (90) following such termination.

## **ARTICLE 8**

### **WAIVER OF CONSEQUENTIAL DAMAGES**

#### **8.1 WAIVER.**

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. The Parties waive claims against each other for consequential damages arising out of or relating to this Lease.

#### **8.2 COOPERATION**

The Parties agree to act reasonably in the performance of this Lease. Wherever either Lessee's or Lessor's approval is required in this Lease, it is understood that such approvals shall not be unreasonably withheld, delayed or conditioned unless this Lease specifically provides that a different standard should apply. This Lease to cooperate shall be construed to require each Party to use its best efforts to cause this Lease to receive approval from all necessary governmental authorities to enable Lessor to sell Electric Energy and recognize Environmental Attributes in accordance with the terms and provisions of this Lease (including, without limitation, acceptance for filing by the Federal Energy Regulatory Commission if applicable and any necessary approvals from the Public Utilities Commission of Ohio).

## **ARTICLE 9**

### **GENERAL PROVISIONS**

#### **9.1 REPRESENTATIONS AND WARRANTIES**

On the effective date of this Lease and throughout the Term of this Lease, each Party hereby represents and warrants to the other that:

- (a) It is duly formed, validly existing and in good standing under the laws of its state of formation, and has all necessary legal power and authority to enter into this Lease.
- (b) The execution, delivery and performance of this Lease and the consummation of the transactions contemplated hereby have been duly authorized.

- (c) The execution and delivery of this Lease will not result in or constitute any of the following: (i) a default, or an event that, with notice or lapse of time or both, would be a default, breach or violation of such Party's articles of association, by-laws, limited liability company agreement, or other organizational documents or any instrument, contract or other agreement to which it is a party or by which it or its property is bound, or (ii) the violation of any law, judgment, order, writ, injunction, or decree affecting it.
- (d) It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.
- (e) There is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Lease.

## 9.2 ASSIGNMENT; SUCCESSORS

**9.2.1 Assignment.** Neither Party shall voluntarily assign, sell, transfer, delegate or declare itself trustee on behalf of any person in regard to (or otherwise deal with in like manner) its rights or duties under this Lease, or any part of such rights or duties, without the written consent of the other Party, which will not be unreasonable withheld.

**9.2.2 Encumbrances.** Lessor, without approval of Lessee, may, in the form of collateral security, encumber to a lender its interest under this Lease for the purposes of financing the construction and maintenance of the System. The Parties agree that in the event Lessor assigns its rights hereunder to a Lender as collateral security: (i) they will not modify or cancel this Lease without the prior written consent of the Lender; (ii) the Lender shall have the right, but not the obligation, to do any act required to be performed by Lessor under this Lease, and any such act performed by the Lender shall be as effective to prevent a Default as if done by Lessor itself; (iii) no Default which requires the giving of Notice to Lessor shall be effective unless a like Notice is given to the Lender, and if Lessee becomes entitled to terminate this Lease due to an uncured Default by Lessor, Lessee shall not terminate this Lease unless it has first given Notice of such uncured Default to the Lender; (iv) in case of termination of this Lease as a result of any Default or upon bankruptcy of Lessor, Lessee shall give prompt Notice to the Lender and, upon written request by the first priority Lender within thirty (30) days after receipt of Lessee's Notice and agreement by such Lender to cure all outstanding Defaults of Lessor, agree to enter into a new equipment lease with such Lender on the same terms and conditions as this Lease and for the period that would have been remaining under this Lease, but for the termination; and (v) for the purpose of implementing this Lease, Lessee will from time to time enter into reasonable consents and agreements with any such Lender. Lessor shall within sixty (90) days after execution of this Lease identify in writing any Lenders providing financing for this Equipment; thereafter, if Lessor obtains additional Lenders, Lessor shall notify Lessee in writing. The Parties further agree that they shall at any time during the term of this Lease within ten (10) days after receipt of a Notice from the other Party, execute a written statement certifying that this Lease is unmodified and in full force and effect (or modified and stating the

modification) and that no Defaults exist (or that Defaults exist and the nature of such Defaults). Except as otherwise stated, this Lease inures to the benefit of the Parties, their successors and permitted assigns.

### 9.3 INSURANCE

**9.3.1 Required Insurance Coverage.** Lessor shall, at its sole expense, maintain in full force during the term of this Lease the following occurrence form insurance and shall provide certificates of such insurance to Lessee before the commencement of any work hereunder and thereafter on a yearly basis:

- (a) Workers' Compensation: Statutory;
- (b) Employer's Liability: \$1,000,000 US;
- (c) Comprehensive General Liability (including personal injury and property damage): \$1,000,000 US per occurrence;
- (d) Automotive Liability (including personal injury and property damage): \$1,000,000 US per occurrence; and
- (e) Professional Liability Insurance for design services with respect to the System, written on either an "occurrence" or "claims made" basis, with limits of liability not less than \$1,000,000 per claim/\$1,000,000 annual aggregate, and with a deductible no greater than \$25,000 insuring against any liability described above and/or rising out of or in connection with the negligent acts, errors or omissions of Lessee or any consultant in connection with the carrying out of their responsibilities under this Lease.

**9.3.2 Property Damage and Casualty Insurance.** Lessee shall, at its sole expense, maintain property damage and casualty insurance, sufficient to cover the depreciated replacement value of the Equipment and identify Lessor as the sole loss payee thereon. Lessee shall provide certificates of such insurance to Lessor on a yearly basis.

**9.3.3 No Decreases.** Such certificates specified in Section 9.3.1 above shall name Lessee as an additional insured and shall not be cancelable on less than thirty (30) days' notice to Lessee. If Lessor's insurance coverages increase in the areas stated in Section 9.3.1, then new certificates shall be issued to reflect such increased coverages. In no event shall the amount of coverage be decreased below the amounts stated in Section 9.3.1 without the prior written agreement of Lessee. Any new certificates shall not be cancelable on less than thirty (30) days notice to Lessee.

**9.3.4 Additional Insured.** Lessor shall name Lessee as an additional insured on insurance coverage specified in this Section 9.3.1. Lessor shall furnish the other with Certificates of Insurance evidencing compliance with this Section and shall provide Notice of any material change, modification or cancellation of any insurance policy.

**9.3.5 Alternative Forms of Coverage.** Insurance coverage required by this Section may be provided under blanket insurance policies so long as coverage amounts are consistent with the requirements of this Section.

#### **9.4 GOVERNING LAW**

This contract shall be governed by the laws of the state of Ohio, without reference to principles of conflict of law.

#### **9.5 FURTHER ASSURANCES**

If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary or desirable to carry out the terms of this Lease, such Party shall make a written request for such from the other Party. The Party receiving such request shall reply to such request within thirty (30) days of its receipt of such request, either complying with the request or providing reasons for failure to comply with the request.

#### **9.6 SEVERABILITY**

If any term or provision of this Lease, or the application thereof to any person, entity or circumstances is to any extent invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

#### **9.7 MODIFICATION OR AMENDMENT**

No modification or amendment of all or any part of this Lease shall be valid unless it is reduced to writing that expressly states that the Parties thereby agree to a modification or amendment as applicable and such writing is signed by both Parties.

#### **9.8 NO DUTY TO THIRD PARTIES**

Except as otherwise specifically provided in this Lease, nothing in this Lease, or any action taken hereunder, shall be construed to create any duty, liability or standard of care to any person other than a Party. Except as specifically set forth in this Lease, this Lease is not intended to create and does not create any rights in or benefits to any third party.

#### **9.9 NO PARTNERSHIP**

Nothing contained in this Lease shall be construed to create an association, trust, partnership or joint venture or impose a trust or partnership duty, obligation or liability between or among the Parties.

#### **9.10 NON-WAIVER**

Except as expressly provided herein, failure to enforce any right or obligation by either Party with respect to any matter in connection with this Lease shall not constitute a waiver as to that matter or any other matter.

#### **9.11 CAPTIONS**

All titles, subject headings, section and clause headings, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Lease.

#### **9.12 ENTIRE AGREEMENT**

This Lease and the Appendices hereto constitute the entire understanding between the Parties with respect to the matters set forth herein and supersedes all previous claims, agreements, representations or understandings, whether oral or written.

### **ARTICLE 10**

#### **NOTICES**

All Notices shall be in writing except as otherwise expressly provided in this Lease and shall be given, tendered, or delivered as the case may be at the addresses set forth above by: (i) first-class U.S. mail with postage prepaid addressed to the Party, return receipt requested; (ii) personal delivery of the Notice to the Party, with signature of the recipient requested; (iii) dispatch of the Notice to the Party by overnight delivery service, return receipt requested; or (iv) telecopying the Notice to the Party; in each case using the addresses set forth above. Changes in such details may be made by Notice similarly given.

A Notice takes effect from time it is received unless a later time is specified in it. A posted letter is taken to be received on the third day after posting. A telecopy Notice is taken to be received on production of a transmission report by the machine from which the Notice was sent that indicates the telecopy number of the recipient.

### **ARTICLE 11**

#### **DISPUTE RESOLUTION**

**11.1 SCOPE.** Any dispute arising out of, relating to, or in connection with this Agreement shall be resolved as set forth in this Section 11.

**11.2 INFORMAL DISPUTE RESOLUTION PROCEDURES.** The Parties shall attempt in good faith to resolve such dispute within fifteen (15) business days following receipt by one Party of notice of such dispute from the other Party. Statements made by representatives of the Parties during the dispute resolution procedures set forth in Sections 11.2 and 11.3 and documents specifically prepared for such dispute resolution procedures shall be considered part of settlement negotiations and shall not be admissible as evidence in any litigation proceeding between the Parties without the mutual consent of the Parties.

**11.3 MEDIATION.** Mediation of a dispute under this Agreement may not be commenced until the earlier of: (i) such time as both of the Parties conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) fifteen (15) business days after receipt of notice referred to in Section 11.2. If, after such time period, the dispute remains unresolved, the Parties shall attempt to resolve the dispute through mediation administered by the AAA under its Commercial Mediation Procedures before resorting to litigation, as provided by Section 11.4, provided that in no case shall any representation or decisions made within the context of the mediation be binding upon the Parties without mutual consent of the Parties. The Parties agree that any period of limitation to the assertion of a claim shall be deemed tolled during the conduct of informal dispute resolution under Section 11.2 and mediation under this Section 11.3, and that any claim of any Party shall be deemed not to have accrued until mediation is terminated.

**11.4 LITIGATION.** Unless the Parties otherwise agree, if mediation as set forth in Section 11.3 does not resolve the dispute within thirty (30) business days following a reference to mediation or such longer period as the Parties may mutually agree, then the Parties shall present the dispute to such court of competent jurisdiction located in Columbus, Ohio.

**11.5 PROVISIONAL REMEDIES.** No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement or to enforce or execute upon a judgment entered in accordance with this Agreement, including temporary and preliminary injunctive relief and restraining orders.

*[Remainder of this page intentionally left blank. Signature page to follow.]*

IN WITNESS WHEREOF, each of the Parties has executed and delivered this Equipment Lease as of the Execution Date.

**DUBLIN ADVANCED ENERGY PARTNERS, LTD.**, as Lessor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF DUBLIN**, as Lessee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to legal form and correctness:

By: \_\_\_\_\_  
Director of Law

## **APPENDIX**

1. DESCRIPTION OF EQUIPMENT, SPECIFICATIONS AND MINIMUM OUTPUT REQUIREMENTS
2. LICENSED AREA
3. RENT SCHEDULE AND CAPACITY REDUCTION CREDIT

## **APPENDIX 1**

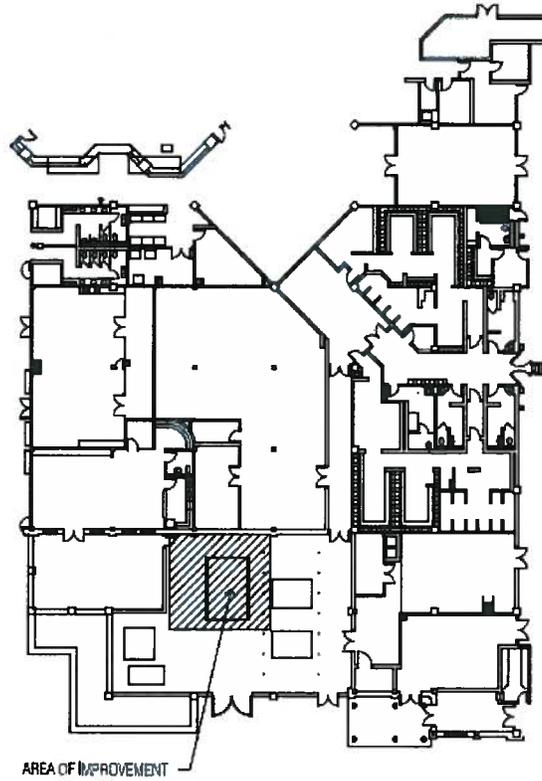
### **DESCRIPTION OF EQUIPMENT, SPECIFICATIONS AND MINIMUM OUTPUT REQUIREMENTS**

#### **Minimum Output Requirements:**

Minimum hours as metered by the CHP System meters are set to 4,380 hours per year or 1,073,100kWh per year.

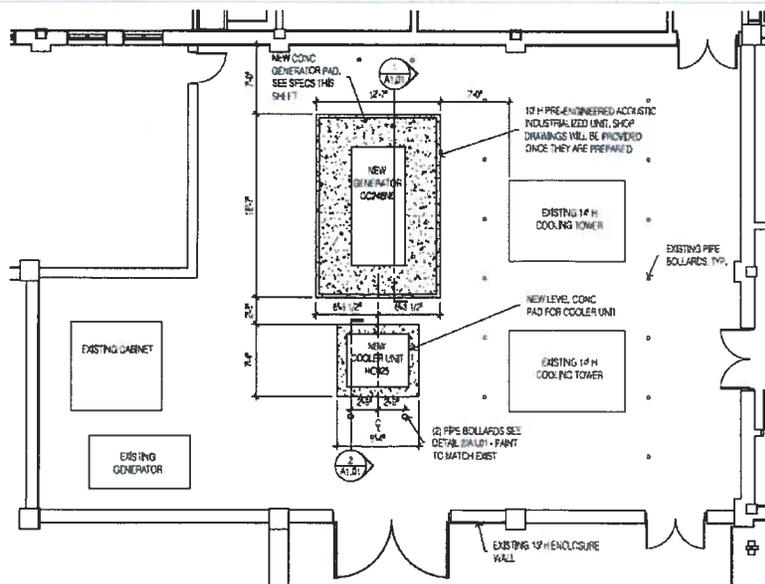
## APPENDIX 2

### LICENSED AREA



**Building Key Plan**

N.T.S.



### APPENDIX 3

#### RENT SCHEDULE

Engine Hour Rate schedule:

Year	Year 1-5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
\$ / Hour	\$12.5215	\$12.8972	\$13.2841	\$13.6826	\$14.0931	\$14.5159	\$14.9513	\$15.3999	\$15.8619	\$16.3377	\$16.8279
Rent \$ / Yr	\$103,077	\$106,169	\$109,355	\$112,635	\$116,014	\$119,495	\$123,080	\$126,772	\$130,575	\$134,492	\$138,527

Estimated Annual Equipment Hours = 8232 hours

Net Engine Output = 245 kW

Estimated Annual Kilowatt Hours = 2,016,840 kWh

Actual Equipment Hours = Actual annual engine run hours

Annual Rent = Estimated Annual Equipment Hours \* Rate

Annual Rent = 8232 \* \$12.5215

Annual Rent = \$103,076.98

Monthly Rent = Estimated Annual Rent ÷ 12

Monthly Rent = \$8,589.74 per month

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#### CAPACITY REDUCTION CREDIT:

Capacity Adjustment = ((Actual Operating Kilowatt Hours – Estimated Operating Kilowatt Hours) / Net Engine Output)\* Engine Hour Rate

For example, assume the Equipment operated at only 60% of Estimated Annual Kilowatt Hours during a year of the Term. Lessor would issue a Capacity Adjustment against the affected year's invoice, calculated as follows:

Capacity Adjustment = (((2,016,840 \* .60) - 2,016,840) / 245) \* \$12.5215

Capacity Adjustment = ((1,210,104 - 2,016,840) / 245) \* \$12.5215

Capacity Adjustment = -\$41,230.79 (credit )

Now assume the Equipment operated at 105% of Estimated Annual Kilowatt Hours during a year of the Term. Lessor would issue a Capacity Adjustment against the affected year's invoice, calculated as follows:

Capacity Adjustment = (((2,016,840 \* 1.05) - 2,016,840) / 245) \* \$12.5215

Capacity Adjustment = (2,117,682 - 2,016,840) / 245 \* \$12.5215

Capacity Adjustment = \$5,153.85 (debit )