

“EAC” means the Energy Advisory Committee to be formed by the University to provide input to the University with respect to the operation and use of the Utility Facilities. The membership and voting procedures of the EAC shall be determined by the University, in its sole discretion, provided that at least one member shall be a Representative of the Concessionaire.

Section 4.3. Approval of Capital Improvements, ECMs and Material Changes.

- (a)
- (b) The Concessionaire shall have the right to request Approval of (I) a proposed Capital Improvement, ECM or Material Change or (II) a change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change at any time (and shall identify whether an item requested for Approval or any portion thereof is a Capital Improvement, ECM or Material Change or a combination thereof and allocate any portion of the proposed cost that is intended to reduce the Energy Use Intensity), but the University shall not be obligated to consider any such requests for Approval except those requests (i) (A) contained in a proposed Five-Year Plan submitted in accordance with Section 7.3(b) after review thereof by the EAC and (B) proposed to be commenced in the first full Fiscal Year in such proposed Five-Year Plan; (ii) required to address an Emergency, a change in Law or a change in a Performance Standard; (iii) required in connection with a University Directive; or (iv) required due to Force Majeure, all of which the University shall consider in good faith.
- (c) The Concessionaire shall request Approval of one or more proposed Capital Improvements, ECMs or Material Changes or Approval of a proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change by (1) submitting a request to the University, or an office or person designated by the University Liaison, containing a detailed description of each proposed Capital Improvement, ECM or Material Change or proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change or (2) submitting a proposed Five-Year Plan in accordance with Section 7.3(b) after review thereof by the EAC containing a detailed description of each proposed Capital Improvement, ECM or Material Change proposed to be commenced in the first full Fiscal Year in such proposed Five-Year Plan or each proposed change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change, provided that, in each case, such detailed description shall include: (A) total costs for construction and installation thereof; (B) forecasted annual operations and maintenance costs therefor; (C) any proposed modification to the Recovery Period (if applicable) for such Capital Improvement, regardless of whether the Recovery Period would otherwise extend beyond the Term; (D) in the case of a proposed ECM, projected savings calculations and payback schedules, inclusive of O&M Costs, associated with such ECM, including a breakdown of costs and savings by individual ECM; (E) an explanation of all relevant assumptions, variables, and data sources, used to develop the proposal; (F) in the case of a proposed ECM, an explanation of the reasoning behind the prioritization of any ECM proposals; and (G) the proposed schedules, process, and other technical

and logistics details associated with the proposed Capital Improvement, ECM, and/or Material Change proposal, including any liquidated damages if the Concessionaire fails to meet the proposed schedule; provided that, to the extent any of the details set out in clauses (A) through (G) above are unavailable or inapplicable, the Concessionaire shall describe the reason for such unavailability or inapplicability. To the extent the University elects to, or is required to, consider a request for Approval of a proposed Capital Improvement, ECM or Material Change or a change in the scope or cost of a previously Approved Capital Improvement, ECM or Material Change, the University shall review such request and, in its sole discretion:

(iv) (1) reject such proposed Capital Improvement, ECM or Material Change

**ARTICLE 7
UTILITY FEE, FIVE-YEAR PLAN, ENERGY SUPPLY AND ENERGY USE
INTENSITY REDUCTION**

Section 7.1. Utility Fee.

- (a) As compensation for the services provided hereunder by the Concessionaire to
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Section 7.2. Updates to the Utility Fee and O&M Costs.

- (a) The Parties acknowledge the importance of documenting and discussing best practices and Prudent Industry Practices for Comparable Utility Systems to determine whether the Parties should consider modifying the Performance Standards or the components of the Utility Fee. In connection therewith, the University shall form an EAC to liaise with the Concessionaire so that the University and the Concessionaire have an open dialogue with respect to such matters.
- (b) The EAC shall meet during the 4th Fiscal Year of the Term and at least every 5 Fiscal Years thereafter during the Term (provided that the University shall have the right to reasonably cause the EAC to meet more frequently) to assess the methodology of calculating the Utility Fee, including the determination of the adjustment to the Return on Equity Factor, and the Concessionaire may, through its Representative(s) on the EAC, at such meeting propose any changes in the methodology of the Utility Fee. The University and the Concessionaire shall consider, in good faith, any adjustments to the Utility Fee recommended by the EAC or the Concessionaire's Representative(s) at an EAC meeting. The obligation of the University and the Concessionaire is to consider any such changes in good faith and no change may be made to the methodology of calculating the Utility Fee without the written consent of both Parties.
- (c) The EAC shall meet during the 9th Fiscal Year of the Term and at least every 10 Fiscal Years thereafter during the Term (provided that the University shall have the right to reasonably cause the EAC to meet more frequently) to conduct a full review of the categories of O&M Costs and the components thereof being included in the Utility Fee and the Capped O&M Ceiling and to determine if such categories of O&M Costs, the components of each category of O&M Costs or the Capped O&M Ceiling should be adjusted, and the Concessionaire may, through its Representative(s) on the EAC, at such meeting, propose any changes to the categories of O&M Costs and the components thereof being included in the Utility Fee and the Capped O&M Index. The University and the Concessionaire shall consider, in good faith, any adjustments to the categories of O&M Costs recommended by the EAC or the Concessionaire's Representative(s) at an EAC meeting. The obligation of the University and the Concessionaire is to consider any such changes in good faith and no change to the categories of O&M Costs may be made without the written consent of both Parties.
- (d) If either Party believes that the other Party did not consider any recommendation under Section 7.2(b) or Section 7.2(c) in good faith, such Party may submit such claim of bad faith to the dispute resolution process set forth in Article 18.

Section 7.3. Five-Year Plan.

- (a) The Concessionaire shall submit to the University a proposed Initial Five-Year Plan on or before the first December 30 following the Closing Date and shall thereafter submit to the University a proposed Five-Year Plan at least 180 Days prior to the end of each Fiscal Year during the Term. Each proposed Five-Year Plan shall include the Capital Improvements, ECMs and Material Changes (and shall identify whether an item requested for Approval is a Capital Improvement, ECM or Material Change or a combination thereof) that the Concessionaire proposes to make in each Fiscal Year in such proposed Five-Year Plan as well as anticipated O&M Costs, delineated between Capped O&M Costs and Uncapped O&M Costs, and anticipated Supply Costs for each such Fiscal Year. The initial Five-Year Plan can include, and the University will consider in accordance with Section 4.3, proposed Capital Improvements and Material Changes to the Utility System to address any conditions of the Utility System existing prior to the Closing Date. Each proposed Five-Year Plan shall be submitted in a format reasonably acceptable to the University as of the date of submission.
- (b) The University shall convene the EAC after receipt of the proposed Five-Year Plan. The EAC shall review and provide comments to the Concessionaire on such proposed Five-Year Plan within 30 Days after receipt by the University thereof. The EAC's comments on such proposed Five-Year Plan shall not be binding on the University. The Concessionaire shall incorporate those comments from the EAC that the Concessionaire elects to incorporate and shall then submit its proposed Five-Year Plan to the University at least 120 Days prior to the end of the Fiscal Year (or, in the case of the proposed Initial Five-Year Plan, as soon as reasonably practicable after receipt of the EAC's comments).
- (c) The University shall review and provide comments to the Concessionaire on the proposed Five-Year Plan, provided that to the extent pertaining to proposed Capital Improvements, ECMs or Material Changes relating to the first full Fiscal Year in the proposed Five-Year Plan, such review and comments shall be conducted and provided in accordance with Section 4.3(c), and provided further that, subject to Section 7.3(d), if the University shall have previously Approved any such Capital Improvement, ECM or Material Change included in the proposed Five-Year Plan, the University shall not have the right to modify or rescind such prior Approval to the extent of such prior Approval. The Concessionaire shall promptly incorporate and use the University's comments on the proposed Five-Year Plan to prepare a revised version thereof and submit such revised version to the University. This process shall continue until the University Approves the proposed Five-Year Plan.
- (d) The proposed Five-Year Plan Approved by the University shall become the Approved Five-Year Plan as of the commencement of the first Fiscal Year in such proposed Five-Year Plan (or, in the case of a proposed Initial Five-Year Plan, as of the date of the University's Approval); provided, however, that no portion of an Approved Five-Year Plan related to the 2nd through 5th full Fiscal

Years therein shall be deemed Approved by the University, except to the extent that a Capital Improvement, ECM or Material Change is scheduled pursuant to such Approved Five-Year Plan to be started in the first full Fiscal Year and completed in the 2nd through 5th full Fiscal Years therein. For the avoidance of doubt, the Approval of a Five-Year Plan that includes a Capital Improvement, ECM or Material Change that is not scheduled to be commenced until the 2nd Fiscal Year therein at the earliest shall not be deemed an Approval of such Capital Improvement, ECM or Material for purposes of Article 4.

- If the Concessionaire does not accommodate or otherwise resolve any comment provided by the University pursuant to Section 7.3(c), the Concessionaire shall deliver to the University, within 10 Days after receipt of the University's comments, a written explanation as to why accommodation or other resolution of such comment would not allow the Concessionaire to meet the requirements of Section 3.2(a)(ii). The explanation shall include the facts, analyses and reasons that support the conclusion regarding such comment. Any dispute between the Concessionaire and the University over such comment shall be resolved pursuant to the procedures set forth in Article 18.
- If a proposed Five-Year Plan or a portion thereof is not Approved by the commencement of the first Fiscal Year in such proposed Five-Year Plan, the Approved Five-Year Plan or relevant portion thereof shall continue in effect until a new proposed Five-Year Plan is Approved, provided that in the case of the

proposed Initial Five-Year Plan, no Approved Five-Year Plan shall be in effect until the proposed Initial Five-Year Plan is Approved, and provided further that nothing in this Section 7.3 shall permit the Concessionaire to make a Capital Improvement, ECM or Material Change except if it is Approved in accordance with Section 4.3(c). Until the initial Five-Year Plan is Approved following the Closing Date, the Concessionaire shall operate the Utility System in accordance with this Agreement and otherwise in substantially the same manner it had been operated immediately prior to Closing provided that nothing in this Section 7.3 shall permit the Concessionaire to make a Capital Improvement, ECM or Material Change except if it is Approved in accordance with Section 4.3(c).

- (g) For the avoidance of doubt, the Concessionaire's right to receive the Utility Fee, subject to the limitations contained herein and in Schedule 5, shall not be modified or superseded by the Approved Five-Year Plan.
- (h) Except as otherwise provided in Section 7.3(c), the contents of any Approved Five-Year Plan shall not be binding on any future Five-Year Plan.
- (i) Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that all payments to the Operator pursuant to any agreement between the Concessionaire and the Operator to operate the Utility System that have been previously Approved by the University on or prior to the Closing Date, shall be deemed Approved and shall require no further Approval for any Five-Year Plan, provided that such payments do not materially differ from the payments or payment mechanics that were Approved by the University in its Approval of the Operator or otherwise.

Section 7.4. Energy and Water Supply.

- (a) The Concessionaire shall assist the University with the procurement of sufficient electricity, natural gas or other energy supply inputs necessary to fully operate the Utility System as set forth in the Performance Standards (the "Supplies"). At the University's direction, assistance may include, but not be limited to, identification and development of Supply procurement opportunities, provision of market analysis and advice regarding the same, acting on behalf of the University to negotiate or assist in negotiating Supply purchases, acting on behalf of the University or assisting the University in the operation of bidding mechanisms to procure competitive retail Supplies. The University shall be responsible for paying all Supply Costs directly to the vendor of such Supplies. The University, in connection with its commitment to sustainability, minimization of environmental impact, responsible energy procurement, and its rights and responsibilities as the energy Supply customer of record, shall enter into any contracts with a third party for providing Supplies to the Utility System (each, a "Supply Contract"). The University shall determine the types and sources of the Supplies and the appropriate entity (among the Concessionaire, the Operator and the University) to execute each Supply Contract, with the Concessionaire or Operator executing pursuant to a power of attorney. In any

case, regardless of which entity executes a Supply Contract, the University will be considered as the exclusive customer of the Supplies procured pursuant to this Section 7.4(a) or used for the operation of the Utility System. Notwithstanding the foregoing, the Parties acknowledge that as of the Time of Closing, there shall be in place certain Supply Contracts to provide Supplies as described in Schedule 6, and the Concessionaire's obligations under this Section 7.4(a) with respect to the Supplies which are the subject of such Supply Contract shall be met by managing those Supply Contracts until their expiration or termination, at which time the Concessionaire shall be responsible for assisting the University with the procurement of those Supplies for the Columbus Campus as provided herein immediately following the expiration or termination of those Supply Contracts. For the avoidance of doubt, if the third-party supplier of the Supplies fails to deliver such Supplies pursuant to the applicable Supply Contract, (i) such failure shall be a Delay Event (except with respect to any failure to deliver Supplies on University locations outside of the Columbus Campus) and (ii) the Concessionaire acting on behalf of the University shall use commercially reasonable efforts to cause such third-party supplier to deliver such Supplies as soon as reasonably practicable, and (iii) as necessary, assist the University with the prompt replacement of such third-party supplier.

- (b) The Concessionaire shall, upon written notice from the University, be responsible for assisting the University with the procurement, billing and/or management of Supplies to the University or its Affiliates on University locations outside of the Columbus Campus, and such assistance with the procurement, billing and/or management of Supplies shall be deemed part of the Utility System Operations. For clarification purposes, the Concessionaire shall be responsible for assisting the University with the management of Supplies under any existing Supply Contract described in Schedule 6 as provided in Section 7.4(a).
- (c) The Concessionaire shall ensure that Supply Contracts provide that invoices are remitted to the Concessionaire, if so requested by the University in writing, or to such other entity as identified by the University. Promptly after receipt of such an invoice for Supply Costs from a third party but in no event more than 5 Business Days after receipt thereof, the Concessionaire shall forward the Supplier's invoice to the University, and the Concessionaire shall have no obligation to pay such Supply Costs.
- (d) The University shall supply to the Utility System, the water reasonably necessary for the Concessionaire to operate the Utility System and perform its obligations hereunder. The water supplied to the Utility System may be supplied through either a public water system or other private water source. All water supplied to the Utility System shall be of a quality that meets or exceeds the standards required by the United States Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*) and the State of Ohio Safe Drinking Water Standards (Ohio Rev. Code. Ann. § 6109). Any failure to provide water to the Utility System by the University shall not be deemed a University Default; however, failure to provide sufficient