

## THE OHIO STATE UNIVERSITY

Re: Summary of Long-Term Lease and Concession Agreement for The Ohio State University Utility System

This memorandum contains an executive summary and a detailed summary of the draft proposed Long-Term Lease and Concession Agreement for The Ohio State University Utility System (the “Agreement”) by and between The Ohio State University (the “University”) and a to-be-determined concessionaire (the “Concessionaire”), which is under consideration.

### Executive Summary<sup>1</sup>

The University will sell to the Concessionaire utility-related personal property and lease to the Concessionaire utility-related land and facilities on the University’s Columbus campus for a 50-year term, and the Concessionaire will operate, maintain and improve such utility system on the Columbus campus during that term. The utility system for the following utilities are covered under the Agreement: electricity, steam and condensate, chilled water, natural gas and geothermal power. Note that the Concessionaire’s primary obligations are with respect to the utility system’s delivery of these utilities on the Columbus campus and does not include the supply or procurement of any utility commodities. However, the Concessionaire will assist the University with the procurement of utility commodities (*e.g.*, electricity and natural gas) even though it will not be responsible for the supply of such utility commodities. All purchase of such utility commodities shall be made by the University so that it can maintain control of the utility commodity mix. For purposes of Ohio real estate law, the transaction is a lease of the land and facilities for the term, and only title to the personal property, such as vehicles and spare parts, is being transferred to the Concessionaire. For federal income tax purposes, the transaction is intended to be a lease of the land and a sale of the facilities and personal property.

In exchange for the grant of the concession, the Concessionaire shall make an upfront payment to the University of \$1,015,000,000 and shall agree to make payments and grants valued at a minimum of \$150 million as part of its academic collaboration program with the University. During the term, the University shall pay the Concessionaire an annual utility fee for providing the utility services. This utility fee shall consist of (i) a fixed amount of \$45 million (increased 1.5% annually), *plus* (ii) a variable component based on the unrecovered costs of capital improvements made by the Concessionaire, *plus* (iii) an amount representing the annual amortization value of those capital improvements made by the Concessionaire (based on a 20-year amortization period unless otherwise agreed), *plus* (v) an operating fee calculated based on historic operating and maintenance costs, subject to certain limitations and adjustments for additional capital improvements made during the term. The Concessionaire will be eligible for bonus payments based on meeting the 25% energy use intensity reduction goal at a lower cost than anticipated or based on exceeding such goal by at least 5%. Note that the utility fee is not a direct reimbursement to the Concessionaire for its cost of actually performing the utility services but instead

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approximates what would be the market rate of such utility services provided by a third party utility and in line with the University's current costs.

During the term, the Concessionaire's responsibilities will include operating, maintaining, and repairing the utility system, as well as making capital improvements, all in accordance with prudent industry practices and agreed performance standards. The performance standards are detailed specifications intended to require that the Concessionaire operate and maintain the Utility System by at least substantively the same standards as the University maintains and operates the Utility System today. In addition, the Concessionaire must meet certain key performance indicators during the term related to unplanned outage events and hours, emergency response times, Energy Use Intensity reductions on an annual and 10-year basis, and smart meter deployment, and if the Concessionaire fails to do so, it will be subject to annual compensation payments that, depending on the severity and repetitiveness of such failures, can be as high as the greater of \$10 million and 10% of the Utility Fee.

The Concessionaire may not make any capital improvements without the University's approval, which may be withheld in the University's sole discretion except in very limited circumstances. Any capital improvements made by the Concessionaire will modify the utility fee pursuant to the agreed-upon formula in the Agreement. The utility system operations will be under the direction of an experienced operator selected by the Concessionaire and approved by the University, and the Concessionaire must use an experienced and qualified consultant in connection with design-build construction matters. The University may cause the Concessionaire to remove the operator if such operator materially or habitually breaches the performance standards or key performance indicators described above. The Concessionaire must use best efforts to interview University employees who apply for positions with the Concessionaire prior to the transition of control of the utility system. Any debt issued by the Concessionaire secured by its leasehold debt must have an investment grade credit rating.

The University shall retain the right to access the utility system during the term for purposes such as inspections, emergency repairs, and installation of equipment for academic or research purposes. At the end of the term, the Concessionaire will return the utility system to the University.

*Detailed Summary of Long-Term Lease and Concession Agreement  
for The Ohio State University Utility System<sup>2</sup>*

**Article 1. Definitions and Interpretation.** Article 1 sets forth the defined terms and certain other rules of interpretation used in the Agreement. The following are certain select definitions relating to this summary:

- A. “Capped O&M Costs” means the specifically identified operating and maintenance costs incurred by the Concessionaire or the Operator in operating the Utility System and complying with their respective obligations under this Agreement, which costs are intended to cover the expected and recurring costs that are to be incurred in connection therewith such as (i) utilities, (ii) salaries and employee benefits, (iii) supplies, (iv) delivery charges, (v) repair and maintenance costs, (vi) legal fees, (vii) design, energy auditing and engineering services, (viii) janitorial services, (ix) seminar and training costs for employees, (x) service vehicles, (xi) insurance charges and (xii) lease and rental charges.
- B. “Uncapped O&M Costs” means (i) the specifically identified operating and maintenance costs incurred by the Concessionaire or the Operator in operating the Utility System and complying with their respective obligations under this Agreement, which costs are intended to cover the unexpected costs or costs incurred at the University’s direction: (a) costs incurred due to a Delay Event, (b) costs incurred to modify the Utility System as directed by the University, (c) certain costs incurred by the Concessionaire in connection with the Approval process for a Capital Improvement, if such costs are directed to be incurred by the University and the Capital Improvement is not Approved, (d) costs incurred to disconnect property from the Utility System if required pursuant to the Agreement, (e) costs incurred in connection with a modification to the Performance Standards required by applicable law or Prudent Industry Practices, (f) costs incurred to perform the CHP of water feasibility study at the University’s direction, (g) costs incurred to pay Property Taxes, if such Property Taxes are not the result of the Concessionaire’s actions, (h) costs incurred in connection with Supply procurement assistance, (i) costs resulting from the Concessionaire’s failure to comply with Law if caused by the University’s failure to be reasonable in Approving a Capital Improvement or (j) costs incurred in connection with assistance for the regional campuses; and (ii) an amount equal to the sum of the federal income Taxes and the Ohio state commercial activity Tax on the income generated by the Variable Fee Component, assuming the highest corporate income tax rate.
- C. “Utility” means any of the following specific individual utility services: (i) electricity, (ii) steam and condensate, (iii) chilled water, (iv) natural gas and (v) geothermal power, and “Utilities” means each of them.

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- D. “Utility Facilities” means the improvements and equipment (a) constituting part of or located on the Columbus Campus, including those identified in Schedule 3, that are directly and exclusively involved in the generation, distribution and return of the Utilities and the operation and maintenance of the Utility System and that are not beyond the line of demarcation for each Utility as set forth in the Performance Standards, including the distribution pipes carrying the Utilities, the trench-boxes and vaults exclusively used in connection with the Utilities, the McCracken Power Plant, the South Campus Central Chiller Plant, the East Regional Chilled Water Plant, the OSU Substation, the Smith Substation, the West Campus Substation, the Gashouses, the Generator Plant, the Water Treatment Plant, the geothermal wells, and electric distribution wires or (b) located on Utility System Land; provided that the definition of “Utility Facilities” does not include (i) any improvements or equipment that are beyond the line of demarcation for each Utility as set forth in the Performance Standards, except for those areas expressly set forth in the Performance Standards as being within said line of demarcation or (ii) any cameras or other public safety equipment installed, maintained or used by the Department of Public Safety.
- E. “Utility System” means (A) the personal property, improvements, fixtures and equipment owned and operated by the University prior to the Time of Closing to provide the Utilities on the Columbus Campus, specifically limited to (i) the Utility System Assets, (ii) the computer systems and software set forth on Schedule 12, (iii) the Utility Facilities and (iv) the Utility System Land; provided, however, that the “Utility System” shall not include, other than expressly referred to above, (x) any utility distribution facilities or other equipment that is beyond the line of demarcation for each Utility, as set forth in the Performance Standards, (y) any interest in the Public Way or similar real property or (z) any utility facilities in a building that is not a building leased by the Concessionaire, up to the Utility System point of demarcation for such building, as described in the Performance Standards; and (B) from and after the Time of Closing, such Utility System as it is reconfigured, replaced, improved or relocated by the Concessionaire or the Operator pursuant to the terms of the Agreement.
- F. “Utility System Assets” means (i) as of the time immediately prior to the Time of Closing, the personal property of the University used in connection with operations of the Utility System and identified on Part I of Schedule 3 as “Personal Property” and (ii) from and after the Time of Closing, the personal property of the Concessionaire or the Operator used in connection with the operations of the Utility System.
- G. “Utility System Land” means those parcels of real property described in Schedule 3 for McCracken Power Plant, South Campus Central Chiller Plant, the East Regional Chilled Water Plant, the OSU Substation, the Smith Substation, the West Campus Substation, the Water Treatment Plant, the Generator Plant, the Gashouses and certain other land as identified on Schedule 3 and further described in the Memorandum of Lease.

**Article 2. The Transaction; Closing; Conditions Precedent; Covenants.**

- A. Section 2.1: Grant of Concession. At Closing, the Concessionaire shall pay the University \$1,015,000,000 in exchange for (i) a 50-year lease of the Utility System Land and Utility Facilities, (ii) the granting of a non-exclusive license to access certain appurtenant lands and facilities, (iii) the granting of the exclusive right to (A) operate the Utility System and to provide Utility Services on the Columbus Campus, including the right to use, possess, control, operate, manage, modify, maintain and rehabilitate the Utility System and (B) charge the Utility Fee, and (iv) the conveyance of the Utility System Assets. At Closing, the University and the Concessionaire shall also execute the McCracken Sublease and, to the extent required by the Agreement, the Design-Build Agreement.
- B. Section 2.2: Closing. The Closing shall take place no later than 90 Days after execution of the Agreement, provided that the Concessionaire can purchase a 30-Day or 60-Day extension for \$10 million or \$25 million, respectively. Upon receipt of the Closing Consideration (as adjusted pursuant to the Agreement), the University shall cancel and return the Closing Deposit and Cash Deposit. All Prorated Items shall be prorated between the University and the Concessionaire as of 11:59 p.m. on the Day immediately preceding the Closing Date. For every 1 basis point change in the LIBOR swap spot curve there will be a corresponding change of \$815,000 in the Closing Consideration, provided that such protection may not exceed 25 basis points without the prior written consent of the Party paying the change.
- C. Section 2.3: Deposit. The Concessionaire shall pay to the University a Cash Deposit and/or Letter of Credit in an amount of \$75 million, which such deposit shall be retained by the University if the Agreement is terminated for failure of any of the conditions precedent to the University's obligation to close the Transaction.
- D. Section 2.4: Conditions Precedent; Termination.
1. This section sets forth the conditions precedent to each Party's obligation to close the Transaction, including as a condition precedent for the University's benefit the requirement that any Leasehold Mortgage Debt issued by the Concessionaire have an investment grade credit rating as well as the termination rights of both Parties. The conditions precedent are standard for a transaction of this nature.
  2. This section also set forth the termination rights of both Parties. The Agreement may be terminated prior to Closing: (a) by mutual consent of the University and the Concessionaire; (b) by either the University or the Concessionaire if any Governmental Authority shall have issued an order or taken other action permanently restraining or prohibiting the Transaction; (c) by the Concessionaire if any condition precedent to the Concessionaire's obligation to close set forth in this section is not satisfied; (d) by the University if any condition precedent to the University's obligation to close

set forth in this section is not satisfied; or (e) by either the University or the Concessionaire if the Closing has not occurred within 5 Business Days after the Closing Date or a later date agreed to by the Parties.

3. If the Concessionaire terminates the Agreement because any of the conditions precedent for its benefit are not satisfied, the University shall pay the Concessionaire its costs up to \$2.5 million, except in circumstances involving a casualty or Adverse Action.

E. Section 2.5: Covenants. This section sets forth certain standard covenants and obligations of the Parties during the period between execution of the Agreement and Closing (the “Closing Period”). This section also sets forth (A) a requirement for the University to make its employees reasonably available to the Concessionaire to assist in the transition of control, possession, custody, operation, management, and maintenance of the Utility System during the Closing Period at no out-of-pocket cost to the University; (B) a requirement for Concessionaire to use its best efforts to interview all University Utility System Employees who apply for potential employment with the Concessionaire and for any employment offers the Concessionaire chooses to make to such employees to include terms and conditions that are at least comparable to other similarly-situated employees of the Concessionaire; and (C) a requirement for the University to complete the Ongoing Utility System Projects in substantial accordance with the plans as of the Setting Date, unless the University provides written notice of abandonment or modification to the Concessionaire.

F. Section 2.6: Intended Treatment for Federal and State Income Tax Purposes. This section sets forth the intended tax treatment of the Transaction for federal and state income tax purposes. For federal income tax purposes, the Transaction is intended to be a sale of the Utility Facilities and Utility System Assets and a lease of the Utility System Land.

**Article 3. Terms of the Concession.**

A. Section 3.1: Quiet Enjoyment and Present Condition. The Concessionaire shall be entitled to quiet enjoyment of the Utility System, and the Concessionaire’s rights to use, control and possess the Utility System are subject to the right of the University to monitor compliance with the Agreement to ensure that the Utility System is used and operated as required by the Agreement. The Concessionaire agrees to accept the Utility System “AS IS” and acknowledges that it has inspected the Utility System, is aware of its condition and acknowledges that the University makes no representation regarding the condition of the Utility System other than as expressly set forth in the Agreement. All real estate and improvements forming part of the Utility System shall be the fee-owned property of and owned solely by the University for GAAP and state law purposes and are subject to the terms and conditions of the Agreement.

B. Section 3.2: Utility System Operations.

1. The Concessionaire shall be responsible for all aspects of the Utility System Operations during the Term, including costs, expenses, debts, liabilities and other obligations relating to the Utility System, and shall continuously operate the Utility System, except for standard rights to not operate the Utility System in limited circumstances. The Concessionaire shall operate the Utility System in a manner that does not interfere with or impair the operation of the Columbus Campus. The Concessionaire may not disturb the Columbus Campus land except upon at least 10 Business Days' prior notice and upon compliance with any requirements of the University.
2. This section also provides a grant to the Concessionaire of a right of entry and access to the Public Way (which right does not permit the Concessionaire to block or impede traffic on the Public Way), a requirement for the Concessionaire to map the Utility System in accordance with the Performance Standards, and a requirement for the Concessionaire to use an advisor designated in the Agreement as its sole and exclusive advisor providing advice and support to the Concessionaire, in its capacity as the design-builder under the Design-Build Agreement. The Concessionaire may change such advisor only with the Approval of the University.

C. Section 3.3: Operator.

1. The Utility System Operations shall be under the direction and supervision of an experienced operator (the "Operator"). The Concessionaire shall not replace the Operator without Approval of the University, which may only be withheld if the proposer operator does not meet certain objective criteria.
2. If the Operator fails to operate the Utility System in compliance with the Performance Standards and such failure is a material breach of a material requirement of the Performance Standards other than a requirement which is also a Key Performance Indicator, then the University, after 30 Days notice to the Operator and the Concessionaire, may cure such failure and direct that Concessionaire remove the Operator. In addition, if (A) at least 3 Repetitive Failures occur during an Operator Evaluation Period, or (B) a Major KPI Event for the same Key Performance Indicator occurs for 3 consecutive Fiscal Years or (C) 3 Major KPI Events occur in any given Fiscal Year, the University may direct that the Concessionaire remove the Operator. Upon the University's direction to remove the Operator, the Concessionaire shall remove the Operator within 45 Days. The above, in addition to KPI Compensation, is the University's sole remedy with respect to a breach of the Performance Standards or a KPI Event.

D. Section 3.4: Authorizations; Qualifications. The Concessionaire shall obtain and maintain all Authorizations applicable to the Utility System or reasonably required for the Utility System Operations to operate the Utility System and shall maintain its existence and all qualifications necessary to carry on its business pertaining to the Utility System Operations.

- E. Section 3.5: No Encumbrances. Neither the University nor the Concessionaire shall do any act that would create any Encumbrance against the Utility System (other than a Permitted University Encumbrance or a Permitted Concessionaire Encumbrance). Each Party shall use reasonable efforts to assist the other Party in attempting to remove any such Encumbrance that comes into existence as a result of an act or omission by such other Party.
- F. Section 3.6: Single Purpose Covenants; Credit Rating. Subject to the other terms of the Agreement, the Concessionaire shall be formed solely for the purpose of (A) owning the Concessionaire Interest, (B) owning, operating, improving, using, possessing, and otherwise dealing with the Utility System, (C) collecting the Utility Fee, (D) financing its interest in the Utility System, and (E) carrying out the Utility Services and other activities permitted by the Agreement, and shall not engage in any unrelated business or possess any unrelated assets. Any issuance or refinancing of Leasehold Mortgage Debt or other financing arrangement by the Concessionaire after the Closing Date shall have an investment grade credit rating.
- G. Section 3.7: Rights of the University to Access and Perform Work on the Utility System and Utilize Space for Energy Resources and Research Purposes. The University reserves the right to enter and have access to the Utility Facilities in order to inspect the Utility System, make necessary repairs in the event of any Concessionaire Default, to rectify an Emergency or danger, install safety measures, and install or maintain utilities that are not part of the Utility System, among other things, provided that the University (A) shall not be obligated to pay Concession Compensation or receive the Concessionaire's consent for access to inspect the Utility System, make necessary repairs in the event of any Concessionaire Default or rectify an Emergency or danger, (B) shall not have access to any intangibles of the Concessionaire, and (C) shall comply with the Concessionaire's reasonable safety protocols and requirements. The University also reserves the right (1) in connection with renewable energy, energy storage and other energy resources, to use portions of the Utility System for installation of energy apparatus, equipment or improvements, provided that the Concessionaire shall be given the option to perform such installation itself (if it is not part of a pilot program or a donation) and regardless shall be responsible for causing any such energy apparatus equipment, or improvement to be connected to the Utility System, and (2) to use portions of the Utility System for installation of energy apparatus, equipment or improvements to serve research and academic purposes.
- H. Section 3.8: Payment of Taxes. The Concessionaire shall pay Taxes payable in respect of use or operations of the Utility System, including any Property Taxes in respect of the Utility System. To the extent the Utility System or any portion thereof becomes not exempt from Property Taxes due to any cause other than acts or omissions of the Concessionaire, the actual costs of any resulting Property Taxes payable during the Term shall be included in Uncapped O&M Costs.
- I. Section 3.9: Utilities. The Concessionaire shall pay the charges for any utilities used in the Utility System that are not the subject of a Supply Contract or water,

and such charges shall be included as Capped O&M Costs. The Concessionaire shall coordinate all Utility System Operations with other utilities and Persons having equipment around the Utility System, and the University may direct the Concessionaire in such coordination.

J. Section 3.11: Intellectual Property.

1. The Concessionaire shall deliver to the University copies of all Proprietary Intellectual Property owned by the Concessionaire which it uses in relation to the Utility System Operations. The University shall have a perpetual, royalty-free license to use the Proprietary Intellectual Property of the Concessionaire used solely or primarily in connection with the Utility System Operations; provided, that the University shall have the right to exercise such license only (A) from and after the expiration or earlier termination of the Term for any reason whatsoever, (B) during any time that the University is exercising its rights to remedy a Concessionaire Default, or (C) during any time that the Leasehold Mortgagee has replaced the Concessionaire pursuant to the Agreement.
2. The Proprietary Intellectual Property may be delivered in escrow, to be released and delivered to the University, if (I) the Agreement is terminated for Concessionaire Default, (II) a business failure of the Concessionaire occurs, (III) the Concessionaire is dissolved or liquidated or (IV) the Concessionaire fails or ceases to provide services as necessary to permit continued use of such Proprietary Intellectual Property pursuant to the license or any sublicense thereof.

K. Section 3.12: Use of Information and Records. Unless prohibited by applicable Law and to the extent reasonably necessary, the University shall be entitled to access all reasonable records, electronic data and other information collected by the Concessionaire with respect to the Utility System and Utility System Operations. Unless prohibited by applicable Law, the Concessionaire shall be entitled to access all reasonable records, electronic data and other information collected by the University to the extent reasonably required for Concessionaire's performance of its obligations, provided that Concessionaire shall keep such information confidential.

L. Section 3.13: Standard of Operation and Maintenance of the Utility System. The Concessionaire shall maintain and operate the Utility System in accordance with the Performance Standards and Prudent Industry Practices. Such Performance Standards have been structured so as to require the Concessionaire to maintain and operate the Utility System by at least substantively the same standards as the University maintains and operates the Utility System as of the Setting Date.

M. Section 3.15: Naming and Signage Rights, Other Revenue Activities and Commercial Advertisements and Activities.

1. The Concessionaire shall have no right to name or modify the name of the Utility System or any portion thereof or, unless required to do so by applicable Law, to install signage of any kind thereon, without the University's Approval.
  2. The University shall have the right to install signage that relates to identification or naming of the Utility System, the Utility Facilities, portions thereof, or surrounding areas; provided that (i) the Concessionaire shall have no obligation under the Performance Standards to replace or maintain any signage installed by the University for advertising purposes, and (ii) the University shall not install any signage that relates to naming of the Utility System, the Utility Facilities, portions thereof, or surrounding areas for a Person that competes directly with the Concessionaire or the Operator.
  3. The Concessionaire may investigate opportunities to develop additional sources of revenue in connection with the Utility System, provided that the Concessionaire shall not perform any such revenue producing activities until (i) the Concessionaire provides reasonable proof to the University for its Approval that such activities will not adversely affect (A) the University or its students or employees, including causing any increase in costs, or (B) the ability of the Concessionaire to comply with the Agreement; (ii) the University is granted the right to receive a portion of the gross revenue from such activities as compensation for the University's actual costs in connection therewith; (iii) the Concessionaire has received all relevant Authorizations; and (iv) the Concessionaire provides reasonable proof to the University for its Approval that such activities will comply with Prudent Industry Practices and applicable Laws.
- N. Section 3.16: Reversion of Utility System. On the Reversion Date, the Concessionaire shall return to the University the Utility System.
- O. Section 3.17: Police, Fire, Emergency, and Public Safety Access Rights. Any police, fire, and other emergency and security personnel retained by the University shall have access to the Utility System.
- P. Section 3.18: Negotiations with Third Parties. Prior to entering into any agreement with a third party that could extend beyond the Term or pursuant to which the University may incur liability, the Concessionaire shall submit such agreement for Approval by the University, which may be withheld in its sole discretion.
- Q. Section 3.19: Administration of the Public Way. The Concessionaire acknowledges and accepts that the University holds and administers the Public Way for the non-discriminatory benefit of all Persons and interests.
- R. Section 3.20: Rights to Adjacent Space. The University reserves, and does not lease to the Concessionaire, the air rights with respect to the Utility Facilities and other property within the Utility System and the right to use any of the space not

directly occupied by the Utility System, including space above, below or adjacent to the Utility System, provided that such use does not materially impair the Utility System Operations.

- S. Section 3.21: Sole Utility Provider. The University may not, and may not contract or agree with any third party to, provide any Utility or Utility Services on the Columbus Campus, except in the following circumstances: (i) as of the Bid Date, a third party is providing the relevant Utility or Utility Services to a portion of that Columbus Campus, (ii) as of the Bid Date, any district utility systems within the Columbus Campus which are generating or distributing Utilities beyond the lines of demarcation identified in the Performance Standards or (iii) the University installs systems, equipment or materials for the distribution of Utilities beyond the lines of demarcation identified in the Performance Standards, which shall be performed by or on behalf of the University. If the University does not own or lease from a third party an improvement on the Columbus Campus, the University shall have no obligation to cause the Concessionaire to be the sole provider of Utilities thereto.
- T. Section 3.22: Repair and Maintenance of the Tunnels. The Concessionaire shall cause any intentional or unintentional damage to the Tunnels or the Release of any Hazardous Substances in the Tunnels caused, directly or indirectly, by the Concessionaire or the Utility System to be promptly restored and repaired using a contractor Approved by the University. Other than the Concessionaire's responsibilities pursuant to this section and the Performance Standards and its responsibility to maintain the Utility System, the University shall be responsible for the repair and maintenance of the Tunnels and the equipment therein in accordance with Prudent Industry Practices.
- U. Section 3.23: Adjustments to the Location or Configuration of the Utility System. The University may cause the Concessionaire, at the University's cost, to alter the location or configuration of the Utility System or to designate alternative real property for the Utility System Land to the extent the University deems it necessary or useful in the operation and use of the Columbus Campus.
- V. Section 3.27: Utility System Tours. The Concessionaire shall provide tours of the Utility System to the University upon reasonable request by the University.
- W. Section 3.28: Uniforms. Concessionaire and Operator personnel working on the Columbus Campus shall wear a uniform that is standard across the Utility System and clearly identifies them as Concessionaire and Operator personnel.
- X. Section 3.29: Gashouses. Prior to engaging in any discussions regarding the Gashouses with any third party, the Concessionaire or the Operator shall provide the University the opportunity to participate in such discussions. The Concessionaire shall also promptly provide the University with copies of any written correspondence regarding same with such third parties.

**Article 4. Capital Improvements, ECMs and Material Changes.**

- A. Section 4.1: Concessionaire Responsibility for Capital Improvements. Other than the Ongoing Utility System Projects, the Concessionaire shall be responsible for all Capital Improvements with respect to the Utility System, including as required by the Performance Standards.
- B. Section 4.2: Authorizations Related to Capital Improvements. The Concessionaire's obligation to perform Capital Improvements shall be subject to the issuance by Governmental Authorities and the University of any and all required Authorizations.
- C. Section 4.3: Approval of Capital Improvements, ECMs and Material Changes.
1. The Concessionaire shall not have the right to make any (i) Capital Improvements, (ii) ECMs on the Utility System Land, Utility Facilities or Non-Utility Campus, or (iii) Material Changes, except those Approved by the University pursuant to the Agreement.
  2. The Concessionaire shall have the right to request such Approval at any time, but the University shall not be obligated to consider any such requests for Approval except those requests (i) contained in a proposed Five-Year Plan and 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.
  3. The Concessionaire shall request Approval by (1) submitting a request to the University or (2) submitting a proposed Five-Year Plan. The University shall review such request and, in its sole discretion: (i) Approve such request in accordance with its terms; (ii) require the Concessionaire to perform additional work with respect to such request (which may include obtaining quotations from contractors), provided that the cost for any such additional work that is expressly requested by the University shall be recoverable by the Concessionaire as part of New Approved Capital Improvement Costs or Uncapped O&M Costs; (iii) provide comments to the Concessionaire regarding the request; or (iv) reject the request and, if the request related to an item necessary to comply with Prudent Industry Practices, applicable Law, or the Performance Standards, provide an explanation, provided the University may not reject a request if (w) it is required to cause the Utility System to comply with any new Law or change in Law and the Concessionaire has received a non-compliance notice from a Governmental Authority, (x) the Concessionaire has investigated any potential alternatives, (y) the Concessionaire has discussed with the University and considered alternatives and (z) the University has not provided a reasonable alternative.

4. The University may, as a condition of its Approval, require that the Concessionaire pay liquidated damages if it fails to meet a completion deadline for the applicable Capital Improvement, ECM or Material Change that is no more stringent than the deadline proposed by the Concessionaire.
5. After Approval, the Concessionaire shall make the Capital Improvement, ECM or Material Change in accordance with the Agreement, including by paying prevailing wages.
6. The Concessionaire may perform Design-Build ECMs and Non-Construction ECMs on the Non-Utility Campus (defined as the portion of the Columbus Campus not leased to the Concessionaire) only in accordance with the terms and conditions of the Agreement. At Closing, the University shall select the Concessionaire as a “design-build firm” in accordance with and as defined in Chapter 153. The Concessionaire must comply with prevailing wage law in implementing any construction on the Columbus Campus. The Concessionaire must comply with the requirements of Chapter 153 and the prevailing wage law in implementing any Design-Build ECMs on the Non-Utility Campus.
7. The Concessionaire shall have the right, as its sole remedy with respect to any Approvals or rejections by the University pursuant to this section, to submit a claim through the dispute procedures in Article 18 that the University was unreasonable, notwithstanding that the University is not required to be reasonable in connection therewith. If it is determined that the University was unreasonable, (i) the University and the Concessionaire shall cooperate in good faith to make any reasonably necessary adjustments to the Key Performance Indicators, the Performance Standards and the requirements of the Agreement regarding reductions in Energy Use Intensity associated with the proposed Capital Improvement, ECM or Material Change and (ii) the University shall waive any claim for a Concessionaire Default for an associated failure to comply with Law or to remedy an Emergency (other than an Unplanned Outage) to the extent such failure would not have occurred but for the University being unreasonable, provided the Concessionaire shall diligently attempt, in good faith, to develop and implement an alternative solution to cause the Utility System or the Utility System Operations to comply with Law or to cause such Emergency (other than an Unplanned Outage) to be remedied.

D. Section 4.4: Recovery Period of Capital Improvements. If the Recovery Period of a Capital Improvement, which is a 20-year period over (or such other period as agreed by the University and the Concessionaire) which the Concessionaire recovers the cost of a Capital Improvement via the Utility Fee, is for a period of time beyond the Term, the Concessionaire may elect to either (i) construct such Capital Improvement, in which case the Recovery Period shall be utilized for purposes of calculating the Utility Fee in accordance with Schedule 5, subject to the Agreement, which requires that the Unrecovered Balance be paid at the end of

the Term, unless the Agreement is terminated due to a Concessionaire Default or (ii) not construct such Capital Improvement, in which case the University may construct such Capital Improvement.

- E. Section 4.5: University's Capital Plan. The Concessionaire shall reasonably cooperate with the University in the development, modification, and discussions of the University's capital plans and energy conservation initiatives.

**Article 5. Modifications.**

- A. Section 5.1: University Directives. The University may issue a directive to perform work on the Utility System (a "University Directive") to the Concessionaire at any time during the Term, the cost of which shall be recoverable by the Concessionaire.
- B. Section 5.3: Addition, Removal and Lease of Property. If the University sells, conveys or leases for a period longer than the Term any real property within the Columbus Campus to a third party, the Concessionaire shall disconnect such real property from the Utility System and shall not be permitted to serve such real property unless otherwise Approved. If the University provides a leasehold interest in real property served by the Utility System for less than or equal to the period of time remaining in the Term to a third party, the Concessionaire shall continue to provide Utilities to such real property in accordance with the Agreement, and the University shall remain obligated to pay the Utility Fee attributable to such real property. The University, pursuant to a University Directive, may cause the Concessionaire to provide Utility Services to any portion of the Columbus Campus not served by the Utility System at that time and may expand the definition of the Columbus Campus.
- C. Section 5.4: Networked Smart Meters. Within 48 months after the Closing Date, the Concessionaire, at its sole cost and expense, shall deploy a system to meter and display the usage of electricity, natural gas, chilled water, geothermal power, steam and any heating hot water systems fueled by steam from the central steam plants for all buildings on the Columbus Campus. The cost of installing such smart meters shall not be recoverable through the Utility Fee. The Concessionaire shall develop and deploy a digital dashboard to display the Columbus Campus building energy usage data, which dashboard shall have a web-based interactive public interface that will display individual building data. The Concessionaire shall obtain electricity and/or natural gas usage data from buildings on the Columbus Campus that are not connected to the Utility System and integrate that data into the total Columbus Campus dashboard.

**Article 6. Performance Standards.**

- A. Section 6.1: Compliance with Performance Standards. The Concessionaire shall, at all times during the Term, cause the Utility System Operations to comply with the Performance Standards in all material respects, provided that the

Concessionaire shall have a reasonable period of time to comply with the introduction of changes or modifications to the Performance Standards.

- B. Section 6.2: Proposed Performance Standards. If the Concessionaire wishes to use performance standards other than the Performance Standards, the University must Approve such proposed performance standards.
- C. Section 6.3: Modified Performance Standards. The University has the right to modify the Performance Standards, provided that if such modification is not made in order to comply with Law or conform with standards generally adopted with respect to Comparable Utility Facilities or Prudent Industry Practices, the Concessionaire may be entitled to Concession Compensation (if the costs associated therewith are not otherwise recoverable), but only if the amount of Concession Compensation claimed for all such modifications exceeds \$100,000 Adjusted for Inflation during a Fiscal Year. Any costs for modifications or changes required to comply with Law or to conform with standards generally adopted with respect to Comparable Utility Facilities or Prudent Industry Practices shall be recoverable by the Concessionaire as Uncapped O&M Costs.

**Article 7. Utility Fee, Five-Year Plan, Energy Supply and Energy Use Intensity Reduction.**

- A. Section 7.1: Utility Fee. The University shall pay to the Concessionaire the Utility Fee for each Fiscal Year as determined in accordance with the formula in Schedule 5, and as summarized in the Executive Summary. At least 180 Days prior to the commencement of any Fiscal Year, the Concessionaire shall provide a forecast of the Utility Fee to the University for the upcoming Fiscal Year (the “Forecast Utility Fee”), which may be adjusted up to 30 Days prior to the commencement of such Fiscal Year. The University shall pay the Forecast Utility Fee in 12 equal monthly installments. Within 60 Days after the end of each Fiscal Year, the Concessionaire shall deliver to the University a statement (the “Reconciliation Statement”) which states the actual Utility Fee for the preceding Fiscal Year and provides a detailed accounting of each component of the Utility Fee. The appropriate Party shall pay any difference reflected in the Reconciliation Statement in a lump sum within 30 Days after receipt thereof. The University shall have the right to audit any Reconciliation Statement for up to 5 Fiscal Years after the applicable Fiscal Year.
- B. Section 7.2: Updates to the Utility Fee and O&M Costs. The University shall form an Energy Advisory Committee (“EAC”) (which shall include at least one representative of the Concessionaire) to liaise with the Concessionaire with respect to modifying the Performance Standards or the components of the Utility Fee. The EAC shall meet at least every 5 Fiscal Years to assess the methodology of calculating the Utility Fee (including the determination of any adjustment to the Return on Equity Factor used in the Utility Fee) and at least every 10 Fiscal Years 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. The Concessionaire may propose changes at such meetings through its representative(s)

on the EAC. The University and the Concessionaire shall consider, in good faith, any changes recommended by the EAC or the Concessionaire's representative(s) at an EAC meeting, but neither Party shall have any obligation other than to consider such changes in good faith.

- C. Section 7.3: Five-Year Plan. The Concessionaire shall submit to the University a proposed Five-Year Plan for the budget and plan for the operation of the Utility System and performance of its obligations at least 180 Days prior to the end of each Fiscal Year. Each proposed Five-Year Plan shall include the Capital Improvements, ECMs and Material Changes that the Concessionaire proposes to make as well as anticipated O&M Costs and Supply Costs. The EAC shall review and provide comments on such proposed Five-Year Plan to the Concessionaire within 30 Days after receipt. After incorporating any EAC comments that the Concessionaire elects to incorporate, the Concessionaire shall resubmit the proposed Five-Year Plan to the University at least 120 Days prior to the end of the Fiscal Year. The University shall review and provide comments to the Concessionaire, and the Concessionaire shall promptly use such comments to prepare and submit a revised of the proposed Five-Year Plan. This process shall continue until the University Approves the proposed Five-Year Plan. No portion of an Approved Five-Year Plan shall be binding except for the portion related to the first Fiscal Year and any Capital Improvements Approved to be commenced in such Fiscal Year. If a Five-Year Plan or portion thereof is not Approved by the commencement of the applicable Fiscal Year, the previously Approved Five-Year Plan shall continue in effect.
- D. Section 7.4: Energy and Water Supply. 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") and the University shall be responsible for paying all Supply Costs directly to Suppliers. 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 on University locations outside of the Columbus Campus, and such assistance shall be deemed part of the Utility System Operations. 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.
- E. Section 7.5: Energy Use Intensity Reduction.
1. The Concessionaire shall cause the Energy Use Intensity for the Fiscal Year ending on June 30, 2028 to be equal to or less than 75% of the Energy Use Intensity for the Fiscal Year ending on June 30, 2017. The Concessionaire shall also cause, at the end of each Fiscal Year, the arithmetic average Energy Use Intensity for that Fiscal Year and the immediately preceding 2 Fiscal Years to be the same or less than the arithmetic average Energy Use Intensity for the 3 immediately preceding Fiscal Years, provided the University waives any rights with respect to the Concessionaire's failure to

do so for the first 2 Fiscal Years after the Closing. The EAC shall meet at least every 10 Fiscal Years to agree upon any additional energy conservation measures that the Concessionaire will be directed to take and to discuss the University's overall energy usage and ECMs.

2. Within 2 Years after the Closing Date, the University shall have the right to request in writing that the Concessionaire provide to the University a detailed study with recommendations for opportunities to reduce the energy use intensity of certain regional campuses owned by the University, and the Concessionaire shall in good faith discuss with the University the Concessionaire implementing such recommendations.
  3. The University shall pay to the Concessionaire in 10 equal annual installments any Energy Use Intensity bonus earned by the Concessionaire based on meeting the 25% energy use intensity reduction goal at a lower cost than anticipated or based on exceeding such goal by at least 5% pursuant to the table on Schedule 21, if applicable.
- F. Section 7.6: CHP Feasibility Study. At the request of the University, the Concessionaire shall promptly conduct a detailed feasibility study and recommendation regarding the construction of a combined heat and power plant as part of the Utility System.
- G. Section 7.7: Water Conservation Feasibility Study. At the request of the University, the Concessionaire shall promptly conduct and provide to the University a detailed feasibility study and recommendation regarding opportunities for the University to reduce its consumption of water.

**Article 8. Reporting; Audits; Inspections.**

- A. Section 8.1: Reports. The Concessionaire shall provide notice to the University of all Emergencies and all Releases of Hazardous Substances with respect to the Utility System, within 6 hours after becoming aware of the Emergency or Release. The Concessionaire also must provide notice to the University of all claims in excess of \$25,000 made by or against the Concessionaire. The Concessionaire shall deliver to the University audited financial reports within 120 Days of the end of each Fiscal Year as well as all reports and information required by the Performance Standards.
- B. Section 8.2: Information. At the request of the University, and at the Concessionaire's cost and expense, the Concessionaire shall make available all information relating to the Utility System but not more frequently than once a quarter, and the University shall keep confidential any such information that constitutes trade secrets.
- C. Section 8.3: Inspection; Audit and Review Rights of the University. The University, upon 10 Business Days' notice, may carry out an Audit and Review of the information required to be maintained or delivered by the Concessionaire under

the Agreement. The University shall also have access to the Utility System for inspection and testing, provided the Concessionaire must approve any testing.

- D. Section 8.4: Audits, Assistance, Inspections and Approvals. Any reference to the University providing assistance to the Concessionaire performing an Audit shall not relieve the Concessionaire from any liability under the Agreement.

**Article 9. Representations and Warranties.**

- A. Section 9.1: Representations and Warranties of the University. The Agreement contains representations and warranties typical for the nature of this transaction, which include the following: (i) organization; (ii) power and authority; (iii) enforceability; (iv) title; (v) no conflicts; (vi) consents; (vii) compliance with law; (viii) litigation; (ix) environmental matters; (x) financial information; (xi) Utility System Contracts; (xii) absence of changes; (xiii) brokers; (xiv) accuracy of information; (xv) undisclosed defects; and (xvi) tax matters.
- B. Section 9.2: Representations and Warranties of the Concessionaire. The Agreement contains representations and warranties typical for the nature of this transaction and include the following: (i) organization; (ii) power and authority; (iii) enforceability; (iv) no conflicts; (v) consents; (vi) compliance with law; (vii) litigation; (viii) accuracy of information; (ix) representations regarding the Operator; and (x) brokers.
- C. Section 9.3: Non-Waiver. No investigations made by or on behalf of any Party shall have the effect of waiving any representation or warranty made by the other Party.
- D. Section 9.4: Survival. Representations and warranties survive for 24 months except for those listed in this summary in 9.1(i) – (ix) and 9.2(i) – (ix) which shall last indefinitely. Such survival periods shall apply with respect to all Claims notwithstanding any statute of limitations that would be applicable to such Claims under applicable Law.

**Article 10. Finance Obligations.**

- A. Section 10.1: Concessionaire's Obligations. The Concessionaire shall be responsible for obtaining any financing for the performance of its obligations under the Agreement, except as otherwise specifically set forth. The Concessionaire may issue additional Leasehold Mortgage Debt or refinance existing Leasehold Mortgage Debt during the Term, subject to the requirement that such Leasehold Mortgage Debt be rated at least investment grade.

**Article 11. Compliance.**

- A. Section 11.1: Compliance with Laws. The Concessionaire must observe and comply with all applicable Laws, including those regarding non-discrimination, prevailing wage, safety and immigration, and must notify the University within 7

Days after receiving written notice from a Governmental Authority that the Concessionaire may have violated any Laws. To the extent any funds subject to appropriation are used for the payment of the University's obligations, those obligations shall be subject to Ohio Rev. Code Ann. § 126.07.

- B. Section 11.6: Labor Disputes. The Concessionaire shall take all reasonable steps to resolve any alleged or actual labor dispute between it or the Operator and any representative of its or the Operator's employees. The Concessionaire shall use good faith efforts and take immediate steps to effect the limitation and/or removal, by lawful means, of any pickets or picketing that are the result of an alleged or actual labor dispute between it and any representative of its employees.
- C. Section 11.7: Employee Conduct and Performance. The Concessionaire shall ensure that it and the Operator have workplace conduct policies for their employees providing services under the Agreement that are at least as stringent as the University's general policies for conduct in the workplace and are in accordance with Prudent Industry Practices.
- D. Section 11.10: Drug-Free Workplace Certification. The Concessionaire agrees to make a good faith effort to provide and maintain a drug-free workplace. The Concessionaire shall notify the University within 7 Days after receiving actual notice that Concessionaire or its employees have been convicted of a criminal drug violation in the Concessionaire's workplace.
- E. Section 11.11 Minority-Owned and Women-Owned Business Enterprises. The Concessionaire is required to use good faith efforts to obtain the participation of M.B.E./W.B.E. in its Utility System Operations, including requiring the Operator to participate in such programs.
- F. Section 11.12: University Accreditation. The Concessionaire shall ensure that the Utility System provides a sufficient quantity of Utilities in a timeframe sufficient such that the University, or any portion thereof, may maintain any third-party accreditation or other third-party standard of which the University has provided the Concessionaire notice prior to the Setting Date.
- G. Section 11.14: Financial and Audit Standards. The Concessionaire shall observe and comply, in all material respects, with GAAP.
- H. Section 11.15: Affirmative Action Program. The Concessionaire shall maintain a written affirmative action program for the employment and effective utilization of economically disadvantaged persons pursuant to Ohio Rev. Code. Ann. § 125.111(B) and shall cause the Operator and any other Contractor to do so.
- I. Section 11.16: University Payments. All financial obligations of the University under the Agreement are payable solely from the then-current revenues of the University legally available for such purpose and the Concessionaire shall have no right to receive payment from moneys raised by taxation or appropriations.

**Article 12. Payment Obligations.**

- A. Section 12.1: Certain Payment Obligations of the Concessionaire. The Concessionaire has a payment obligation to the University and its Representatives for losses related to various items including (i) breach of representations and covenants, (ii) Assumed Liabilities, (iii) Taxes attributable to a Transfer of the Concessionaire Interest, (iv) increases in Property Taxes not included in the definition of Uncapped O&M Costs, and (v) brokerage fees.
- B. Section 12.2: Certain Payment Obligations of the University. Without limiting any other remedy available under the Agreement, the University has a payment obligation to the Concessionaire and its Representatives for losses related to various items including (i) breach of representations and covenants, (ii) Excluded Liabilities, (iii) brokerage fees, and (iv) payment of Property Taxes that are not the result of the actions or omissions of the Concessionaire.
- C. Section 12.9: Limitation on Certain Claims. The maximum liability of the University, without limiting any other remedy under the Agreement, shall not exceed 50% of the Closing Consideration, but such limits shall not apply to Claims for (i) breaches of certain fundamental representations and warranties, (ii) fraud, intentional misrepresentation or intentional breach of representations and warranties, (iii) certain Excluded Liabilities related to environmental matters, (iv) payment of the Utility System Concession Value, and (v) payment of the Utility Fee. The maximum liability of the Concessionaire, without limiting any other remedy under the Agreement, shall not exceed 50% of the Closing Consideration, but such limits shall not apply to the Claims described in clauses (i) and (ii) above.
- D. Section 12.11: Offset Rights; Limitations on Certain Damages. Each Party's payment obligations shall be subject to its defense and offset rights. No Party is liable for indirect or consequential damages.
- E. Section 12.12: Governmental Immunity. The University shall not waive its rights and privileges pursuant to its governmental immunity.
- F. Section 12.13: Survival. The indemnity provisions survive the termination of the Agreement.

**Article 13. Insurance.**

- A. Section 13.1: Insurance Coverage Required – Concessionaire. The Concessionaire is required to provide and maintain insurance coverages typical for this nature of transaction, including (i) workers' compensation and employer's liability; (ii) commercial general liability (primary and umbrella); (iii) automobile liability (primary and umbrella); (iv) professional liability; (v) network security and privacy insurance; (vi) railroad protective liability; (vii) pollution legal liability; (viii) property; and (ix) builder's risk.

- B. Section 13.2: Insurance Coverage Required – University. The University is required to provide and maintain insurance coverages typical for this nature of transaction, including (i) workers’ compensation and employer’s liability; (ii) commercial general liability (primary and umbrella); and (iii) property.
- C. Section 13.3: Additional Requirements. Each Party must provide original Certificates of Insurance evidencing the Concessionaire Required Coverages or University Required Coverage, as applicable, within 14 Business Days following renewal and must provide 30 Days’ prior notice in the event coverage is canceled (or 10 Days’ prior notice in the case of cancellation for non-payment). Certain other additional insurance requirements are set forth that are typical for this nature of transaction, including the provision that if any of the Concessionaire Required Coverages are not available on a commercially reasonable basis, the Concessionaire may obtain insurance that best approximates the Concessionaire Required Coverages, subject to the University’s Approval. If it is in the best interests of, and agreed by, both Parties, the University shall purchase and hold any of the required Concessionaire insurance coverages.
- D. Section 13.4: Damage and Destruction. If part of any of the Utility System is destroyed or damaged by fire or other casualty of any kind, the Concessionaire shall (i) give the University notice; (ii) proceed diligently to repair the same; and (iii) deposit all insurance proceeds received plus any additional Restoration Funds necessary for such Restoration with a Depositary for approved distributions to the Concessionaire (only if the Restoration costs exceed \$5 million). Prior to any Restoration work, the Concessionaire must submit such plans to the University for Approval.

**Article 14. Adverse Actions.**

- A. Section 14.1: Adverse Action. An Adverse Action shall occur if the City of Columbus, Ohio, the County of Franklin, Ohio, the State of Ohio, or any agency, political division or unit or commission thereof, or the University, takes any action that is (i) principally borne by the Concessionaire (or by the Concessionaire and the concessionaire under the Parking Agreement) and (ii) has a material adverse effect on the fair market value of the Concessionaire Interest, but the following are NOT Adverse Actions: (A) the development, redevelopment, construction, modification or change in the operation of any existing or new utility facility or utility (other than any Utility Facility or the Utilities), (B) the imposition or increase of a state or local Tax of general application or federal Tax and (C) any action of the Public Utilities Commission of Ohio or the Federal Energy Regulatory Commission that subjects the Concessionaire to such agency’s regulatory jurisdiction due solely to the Utility System Operations performed in accordance with the Agreement, which could be a Compensation Event. If an Adverse Action occurs, the Concessionaire may, at its election, either (i) receive the Concession Compensation with respect thereto (“AA-Compensation”); or (ii) terminate the Agreement and receive the Termination Damages, which is defined as the fair market value of the Concessionaire Interest as of the date of such termination provided it is not less

than amount of the Leasehold Mortgage Debt plus the reasonable out-of-pocket expenses incurred by the Concessionaire or the Operator as a direct result of such termination plus any accrued Concession Compensation less any insurance proceeds.

- B. Section 14.2: Termination. If the Concessionaire exercises its right to terminate the Agreement in connection with an Adverse Action, then the Agreement, subject to the University's right to remedy such Adverse Action, shall terminate 60 Days following the date of the University's receipt of the notice setting forth the details of the Adverse Action.
- C. Section 14.3: Right of the University to Remedy. If the University wishes to remedy the Adverse Action, it shall provide notice within 30 Days and remedy the Adverse Action within 120 Days, which remedy may consist of a written commitment to the Concessionaire to pay funds from time to time to compensate the Concessionaire.
- D. Section 14.4: Other Actions by Governmental Authorities. If any Governmental Authority proposes to take any action that will be principally borne by the Concessionaire and have a Material Adverse Effect, then at the request of the Concessionaire, the University shall use reasonable efforts to oppose such action at the Concessionaire's cost.
- E. Section 14.5: Regulatory Filings. To the extent that either Party is required to make any regulatory filing or submission with respect to a tariff or rate for the Utility System or the Utility Fee, the Parties shall reasonably cooperate in connection therewith and shall, collectively, only make one filing or submission. The Parties shall also reasonably cooperate with respect to any required regulatory filings or submissions not involving a tariff or rate for the Utility System or the Utility Fee, to the extent practicable.

**Article 15. Delay Events; Concession Compensation and KPI Compensation.**

- A. Section 15.1: Delay Events. A Delay Event is an event such as Force Majeure and other limited events beyond the Concessionaire's reasonable control that cause a delay to the Concessionaire in performing its obligations. In the event that the Concessionaire is affected by a Delay Event and provides written notice to the University, the Concessionaire will receive an extension of time to perform the obligations for which it was delayed. While a Delay Event is occurring, the Utility Fee shall be reduced by an amount equal to the Utility Fee multiplied by the percentage of the Utility System that is inoperable as a result of the Delay Event, as determined by the University in its reasonable discretion, provided that such Delay Event shall be deemed a Compensation Event. If a Delay Event exceeds 120 continuous Days (or 120 non-continuous Days during a 360-Day period) and it results in a Material Adverse Effect, then the Concessionaire shall have the right to extend the Term for a period of time sufficient to compensate the Concessionaire and to restore it to the same economic position as it would have been in had such

Delay Event not occurred, provided that the Term shall not be extended to the extent it would subject either Party to a leasehold tax or conveyance fee.

- B. Section 15.2: Notice of Compensation Events and KPI Events. If a Compensation Event occurs, the Concessionaire shall give the University written notice within 30 Days. If a KPI Event occurs, the University shall give the Concessionaire written notice within 30 Days.
- C. Section 15.3: Payments of Concession Compensation and KPI Compensation. This section sets forth the procedure for determination and payment of Concession Compensation and KPI Compensation. KPI Compensation is the amount due from the Concessionaire to the University if a KPI Event occurs for each violation and depends on the severity of the event and whether such violation has occurred in prior years. The amount of KPI Compensation for each KPI Event can be as high as the greater of (i) \$10 million and (ii) 10% of the Utility Fee paid in the applicable year. KPI Events relate to unplanned outage events and hours, emergency response times, Energy Use Intensity reductions on an annual and 10-year basis, and smart meter deployment,
- D. Section 15.4: KPI Compensation. Other than the University's right to cause the Concessionaire to remove the Operator, the payment of KPI Compensation by the Concessionaire is the University's sole and exclusive remedy for any KPI Event.

**Article 16. Defaults.**

- A. Section 16.1: Default by the Concessionaire. This section sets forth (i) the events that constitute a "Concessionaire Default" under the Agreement. Such events are typical for this nature of transaction and include, among other things, (A) failing to comply with covenants (other than those relating to a breach of the Performance Standards, smart meters and Energy Use Intensity reduction), (B) transferring its interest in contravention of the Agreement, (C) failing to comply with requirements of a final award resulting from dispute resolution, and (D) admitting that it is unable to pay its debts or otherwise files bankruptcy; and (ii) the remedies of the University upon a Concessionaire Default, including termination of the Agreement with no compensation paid to the Concessionaire.
- B. Section 16.2: Default by the University. This section sets forth the events that constitute a "University Default" under the Agreement. Such events are typical for this nature of transaction and include, among other things, (A) failing to pay the Utility Fee, the Forecast Utility Fee, or the Concession and KPI Compensation Balance, (B) failing to comply with covenants, (C) failing to comply with requirements of a final award resulting from dispute resolution, and (D) admitting that it is unable to pay its debts or otherwise files bankruptcy. This section also sets forth the remedies of the Concessionaire upon a University Default, including termination which obligates the University to pay to the Concessionaire the fair market value of the Concessionaire Interest as of the date of such termination, which may not be less than amount of the Leasehold Mortgage Debt, plus the

reasonable out-of-pocket expenses incurred by the Concessionaire or the Operator as a direct result of such termination plus unpaid Concession and KPI Compensation. A University Default shall not include any failure to perform obligations as a result of Force Majeure.

- C. Section 16.3: Consequences of Termination or Reversion. This section sets forth the procedure to be followed upon the termination or expiration of the Agreement, including Concessionaire's surrendering of the Utility System.
- D. Section 16.4: Termination Other than Pursuant to Agreement. If the Agreement is terminated by the University other than because of a Concessionaire Default, the University shall pay to the Concessionaire the fair market value of the Concessionaire Interest as of the date of such termination plus the reasonable out-of-pocket expenses incurred by the Concessionaire or the Operator as a direct result of such termination.
- E. Section 16.5: Option to Extend the Term. The University shall have the right, upon written notice delivered to the Concessionaire between 3 and 5 Years before the anticipated expiration date of the Agreement on the date that is 50 years after the Closing Date to terminate the Concessionaire's Extension Option by purchasing the Concessionaire Interest for \$1 (representing, for purposes of this section, the residual value of the Utility System and the Utility Facilities existing as of the Closing Date without regard to any Capital Improvements undertaken after the Closing Date). If the University does not exercise such right, the Concessionaire shall have the right to extend the Term by 10 Years by providing written notice to the University within 6 months after the date on which the University declines to exercise its termination right or allows such right to expire, as applicable. If the Concessionaire exercises its right to extend the Term, the calculation of the Utility Fee shall be modified for such extended term as set forth in this section. If the Concessionaire does not exercise such right, then the Agreement shall expire in accordance with its terms.

**Article 17. Restrictions on Transfers.**

- A. Section 17.1: Transfers by the Concessionaire. Subject to the rights of the Leasehold Mortgagee, the Concessionaire may not Transfer any portion of its interest that would result in the Concessionaire directly owning 50% or less of the Concessionaire Interest as of the date of entering into the Agreement unless (i) the University has Approved, and (ii) the proposed Transferee assumes the obligations of the Concessionaire. The University may withhold its consent in various instances, and the University can take into account financial strength and integrity, experience with utility facilities, reputation and the proposed operator. A change in control of the Concessionaire shall be deemed a Transfer requiring the University's consent. If the Concessionaire is not permitted by Law to disclose a change in control prior to its effectiveness, the Concessionaire shall not be in breach of this section if the new Persons holding interests in the Concessionaire meet certain requirements including a minimum net worth, credit rating, and experience

in operating a Comparable Utility System; provided that within 2 Business Days after the Concessionaire is permitted to disclose such change in control, it shall provide the University with written notice thereof and the University shall have the right to Approve such change in control. If the University does not Approve such change in control, it shall be deemed a Concessionaire Default if the Concessionaire does not cause a Transfer or change in control that is Approved by the University to be effectuated within 120 Days after the University's disapproval.

- B. Section 17.2: Assignment by the University. The University may Transfer any or all of its interest but must remain jointly and severally liable.

**Article 18. Dispute Resolution.**

- A. Section 18.1: Scope. Any dispute arising out of the Agreement is to be resolved in accordance with this Article 18.
- B. Section 18.2: Informal Dispute Resolution Procedures. If the Parties are unable to resolve any dispute within 15 Business Days, the dispute shall be referred to the Designated Senior Person of each Party. The Designated Senior Persons shall negotiate in good faith to resolve the dispute.
- C. Section 18.3: Mediation. If the Designated Senior Persons do not resolve the dispute in 15 Business Days, the Parties shall attempt to resolve the dispute through mediation administered by the AAA.
- D. Section 18.4: Litigation. If mediation does not resolve the dispute within 30 Business Days, then the Parties shall present the dispute to a court of competent jurisdiction.
- E. Section 18.5: 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.
- F. Section 18.6: Tolling. If a Party receiving a notice of default under the Agreement contests the propriety of such notice, any cure period that applies to such default shall be tolled for the time period between such application and the issuance of a final award or determination.

**Article 19. Lenders.**

- A. Section 19.1: Leasehold Mortgages. The Concessionaire may grant Leasehold Mortgages subject to various restrictions such as the Concessionaire not being in default, the mortgage may only be in favor of an Institutional Lender, the mortgage may not extend to the fee simple interest of the property, the University shall have no liability, etc. While any Leasehold Mortgage is outstanding, the University shall not amend the Agreement in a way that shall have a material adverse effect on the Leasehold Mortgagee without its consent.

- B. Section 19.2: Notices and Payments to Leasehold Mortgagees. All required notices to be made by the University to the Concessionaire must also be made to the Leasehold Mortgagee. All payments by the University to the Concessionaire shall be made to the Leasehold Mortgagee.
- C. Section 19.3: Leasehold Mortgagee's Right to Cure. The Leasehold Mortgagee shall have 90 Days after a Concessionaire Default to cure the default. If the Leasehold Mortgagee is working to cure the default, the University may not terminate the Concession Agreement.
- D. Section 19.4: Rights of the Leasehold Mortgagee. The Leasehold Mortgagee may enforce its rights in any lawful way, including taking possession of the Utility System. Upon taking possession, the Leasehold Mortgagee may transfer the Utility System subject to the rest of the Agreement, except it shall not be subject to the requirement that all Concessionaire Defaults must be cured upon a Transfer. Prior to taking possession of the Utility System, the Leasehold Mortgagee is not liable for any of the Concessionaire's obligations.
- E. Section 19.5: Termination of this Agreement; New Agreement. If the University terminates the Concession Agreement, the University agrees to enter into a New Agreement for the Utility System with the Leasehold Mortgagee, provided the Leasehold Mortgagee cures any Concessionaire Default.
- F. Section 19.6: Recognition of Leasehold Mortgagee. The Leasehold Mortgagee whose notice was earliest received by the University shall be the only one who shall have the rights as a Leasehold Mortgagee under the Concession Agreement.
- G. Section 19.7: University's Right to Purchase Leasehold Mortgages. In the event of a Concessionaire default and if the Leasehold Mortgagee wishes to foreclose on the Leasehold Mortgage, the University may purchase the Leasehold Mortgage.
- H. Section 19.8: Assignment and Assumption Agreement. If (i) the University has determined that a New Agreement between the University and the Leasehold Mortgagee would violate law or (ii) the University and the Leasehold Mortgagee mutually agree, then the Leasehold Mortgagee and the University shall enter into an Assignment and Assumption Agreement whereby the Leasehold Mortgagee assumes the Concession Agreement in the event of a Concessionaire Default, provided the Leasehold Mortgagee cures such Concessionaire Default.
- I. Section 19.9: Right to Dispute Resolution. In the event of default, the Leasehold Mortgagee shall have the right to participate in the dispute resolution process set forth in Article 18.

**Article 20.** University Academic Collaboration Program. The Concessionaire agrees to provide the compensation and opportunities set forth on Schedule 22 (the Academic

Collaboration Schedule) in accordance with the terms and conditions set forth therein.

**Article 21. Interaction with Parking System Concessionaire.**

- A. Section 21.1: Coordination. To the extent the Concessionaire reasonably determines that the Utility System Operations require the temporary closure of any parking spaces or access to any parking facility or parking space subject to the Parking Agreement, the Concessionaire shall provide the University written notice thereof at least 5 Business Days in advance, except in the case of an Emergency. The University shall then use commercially reasonable efforts to exercise its rights under the Parking Agreement to provide the Concessionaire such temporary closure and access as is reasonably necessary, provided the University may elect not to so if the cost associated therewith is unreasonably disproportionate to the benefit or there is a reasonable alternative.

**Article 22. Miscellaneous.** Article 22 contains the miscellaneous provisions standard for an agreement of this nature, including, among other items, (i) notice requirements, (ii) amendment procedure, (iii) governing law (Ohio), and (iv) waiver of jury trial.