

STANDING ASSIGNMENT AGREEMENT

THIS STANDING ASSIGNMENT AGREEMENT (together with all of the Addenda, as defined below, executed from time to time under this Standing Assignment Agreement, the **Agreement**) is made and entered into as of _____, 20__, between the CITY OF CLEVELAND, OHIO, a municipal corporation duly organized and validly existing under the constitution and laws of the State of Ohio (the **State**) and its Charter (the **City**) and the NORTHEAST OHIO ADVANCED ENERGY DISTRICT, INC., a nonprofit corporation and special improvement district duly organized and validly existing under the laws of the State (the **ESID**) (the capitalized terms used in this Agreement and not defined in the preamble and recitals have the meanings stated in **Exhibit A** to this Agreement):

A. On August 18, 2010, the City Council of the City (**City Council**) passed Resolution 1078-10, which approved the Petition for the Northeast Ohio Advanced Energy District (the **Creation Petition**), the City of Cleveland First Suburbs Development Council Advanced Energy Special Improvement District (Advanced Energy District) Commercial-Industrial Program Project Plan (the **Initial Plan**), and the Articles of Incorporation of the Northeast Ohio Advanced Energy District, Inc.

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

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

D. In order to obtain financing for special energy improvement projects and to create special assessment revenues available to pay and repay the costs of special energy improvement projects, owners of real property within the ESID will petition the City Council to levy special assessments against their properties.

F. To further enable owners of real property within the ESID to obtain financing to pay the costs of special energy improvement projects and pursuant to the Creation Petition, the ESID has determined that financing for special energy improvement projects may be provided by direct investments from third parties, which financing the ESID has determined to facilitate in accordance with this Agreement.

G. The City and the ESID each have determined that the most efficient and effective way to implement the financing, acquisition, construction, equipment, improvement, and installation of special energy improvement projects and to further the public purposes set forth above is through this Agreement, pursuant to the Act and on the terms set forth in this Agreement, with (i) the ESID acting in cooperation with other third parties to finance or assist certain real property owners in obtaining financing for special energy improvement projects, (ii) the owners of real property within the ESID acting to acquire, construct, equip, improve, and install special

energy improvement projects, (iii) the owners of real property within the ESID agreeing to make special assessment payments in an aggregate amount that will provide revenues sufficient to pay or repay the permitted costs of the special energy improvement projects, and (iv) the City agreeing to assign all Special Assessment payments actually received by the City to other third parties, as determined in accordance with this Agreement, to pay or repay the permitted costs of the special energy improvement projects.

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

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

ARTICLE I: DEFINITIONS

Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, words and terms used in this Agreement with capitalized initial letters where the rules of grammar would not otherwise require capitalization shall have the meanings set forth in **Exhibit A** to this Agreement. Definitions shall apply equally to both the singular and plural forms of any of the words and terms. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise.

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

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

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

ARTICLE II: COOPERATIVE ARRANGEMENTS; ASSIGNMENT OF SPECIAL ASSESSMENTS

Agreement Between the City and the ESID. Each of the Parties has requested the assistance of the other Parties in the financing of special energy improvement projects for the benefit of real property within the territory of the ESID. For the reasons set forth in this Agreement's Recitals—which Recitals are incorporated into this Agreement by this reference as a statement of the public purposes of this Agreement and the intended arrangements among the Parties—the Parties have agreed to cooperate for the financing of special energy improvement projects within the ESID upon the terms and conditions of this Agreement. The Parties intend this Agreement to be, and it shall be, an agreement among the Parties to cooperate in the financing, acquisition, construction, equipping, improvement, and installation of “special energy improvement projects” as defined in Ohio Revised Code Section 1710.01. The Parties further agree that this Agreement shall be an agreement under Ohio Revised Code Section 9.482 to further the cooperation and shared services goals of the Parties, and the Parties agree that no action taken under this Agreement by any Party shall result in the levy of any tax or the exercise, with regard to public moneys, any investment powers or any investment functions by one Party on behalf of another Party. The Parties intend this Agreement's agreements to be, and they shall be construed as, agreements to take effective cooperative action and to safeguard the Parties' interests.

The Parties agree that the City shall charge a processing fee for its services provided under this Agreement.

Upon the considerations stated above and upon and subject to the terms and conditions of this Agreement the ESID, on behalf of the Parties, shall finance or assist in the acquisition of financing for the special energy improvement projects after consultation with the owners of real property in the ESID. In consideration of that undertaking by the ESID, the City shall assign, transfer, set over, and pay the Special Assessments received by the City following the settlement in respect of the same with the County Treasurer to third parties directed by the ESID, as appropriate, pursuant to the terms of this Agreement, to pay or repay the costs of the special energy improvement projects at the times and in the manner provided in this Agreement; provided, however, that the City's obligation to transfer the Special Assessments is limited to the Special Assessments actually received by or on behalf of the City following the settlement in respect of the same with the County Treasurer. The ESID hereby agrees to such assignment and transfer.

Anything in this Agreement to the contrary notwithstanding, any obligations of the City under this Agreement, including the obligation to transfer the Special Assessments received by the City to the third parties directed by the ESID, shall be a special obligation of the City and shall be required to be made only from Special Assessments actually received by or on behalf of the City, if any. The City's obligations under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The City's obligations under this Agreement do not and shall not represent or constitute a debt or pledge of the City's faith and

credit or taxing power, and the ESID does not have and shall not have any right to have taxes levied by the City for the transfer of the Special Assessments.

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

- (a) Special Assessment Addenda. In every instance in which the City approves the petition of an owner of real property to include the real property within the ESID and to levy Special Assessments on the property to pay or repay the costs of the special energy improvement projects that will specially benefit the property, the City and the ESID shall execute and deliver an Addendum to this Agreement stating the amount of the Special Assessments, the dates for the collection of the Special Assessments, the property on which the Special Assessments are or will be levied, and the person to which the Special Assessments described in such Addendum shall be assigned and transferred under this Agreement. Each Addendum may also include any other information and documentation as is deemed reasonably necessary by the City in order to effectuate the levy and collection of the Special Assessments described in the Addendum. Each Addendum shall be substantially in the form attached to this Agreement as **Exhibit B**.

If the Special Assessments to be levied under any Addendum are subject to periodic reduction under this Section 2.2, the Addendum shall state that the Special Assessments are subject to periodic reduction and shall provide a method by which the Special Assessments shall be reduced from time to time.

By each Addendum the City and the ESID each shall acknowledge and agree to be bound to perform their respective obligations under this Agreement with respect to the Special Assessments shown on the Addendum.

Under each owner's petition and related Addendum, the City shall levy the Special Assessments in the manner described in this Section 2.2 and shall assign and transfer the Special Assessments it actually receives, if any, under this Agreement, to the person specified in the related Addendum in the manner stated in this Section 2.2.

- (b) The Special Assessment Proceedings. City Council has delegated its authority to approve petitions to add property to the territory of the ESID and to levy Special Assessments on that property to the Director of Development of the City (the **Development Director**). Within 60 days of a property owner's submission of a petition to the Economic Development Director, the Development Director, with the consent of the City Council Member in whose Ward the Property is located, may approve or deny the petition on behalf of City Council. If approved by the Economic Development Director, City Council, under its obligation under Ohio Revised Code Section 1710.02(F) and under this Agreement, shall levy and collect (or cause to be collected, through the County Treasurer) Special Assessments on the property described in the approved petition to pay the costs of special energy improvement projects that will specially benefit the property.

Pursuant to Ohio Revised Code Section 727.33, the City agrees that it shall certify the Special Assessments to the County Fiscal Officer for collection following the passage of all applicable legislation but in any event not later than the last date on which municipal corporations may certify Special Assessments to the County Fiscal Officer for collection in the next following calendar year for all Special Assessments that, under petitions and Addenda to this Agreement, are subject to collection beginning in that next following calendar year. After certification, the Parties understand that the County Treasurer will collect the unpaid Special Assessments with and in the same manner as other real property taxes and pay the amount collected to the City. The City may certify the Special Assessments to the County Fiscal Officer for collection without being instructed to do so by the ESID. The Parties intend that the County Fiscal Officer and the County Treasurer shall have the duty to collect the Special Assessments through enforcement proceedings in accordance with applicable law.

The City shall provide notice to the County Fiscal Officer of the adoption of any Ordinance to Proceed or Ordinance Levying Assessments with respect to any Special Assessments levied in connection with this Agreement under, in the manner described, and within the time periods prescribed in Ohio Revised Code Section 319.61. The notice under Ohio Revised Code Section 319.61 may be provided by the same instrument as the certification identified in the preceding paragraph.

- (c) Collection of Delinquent Special Assessments. The City hereby authorizes the ESID to take any and all actions in the name of, for, and on behalf of, the City to collect delinquent Special Assessments levied by the City pursuant to the Special Assessment Act and to cause the lien securing the delinquent assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Fiscal Officer, and the County Treasurer, as necessary, to institute prompt and timely foreclosure proceedings. The proceeds of the enforcement of any such lien shall be deposited and used under terms and conditions of this Agreement.
- (d) Prepayment of Special Assessments. The Parties agree that the Special Assessments assessed against the assessed properties and payable to the City under the Special Assessment Act, and subject to the terms and conditions of agreements for financing the cost of special energy improvement projects for which the Special Assessments are levied with third parties that finance such costs, may be prepaid by the owner of all or any portion of the assessed properties. In the event of a prepayment of Special Assessments, the City shall transfer prepaid Special Assessment amounts to the person directed in the applicable Addendum promptly upon the City's receipt of those amounts. Following any prepayment, the ESID shall certify to the City a reduction in the amount of the Special Assessments, so that following the reduction, the amount of Special Assessments remaining to be collected shall equal the amounts, if any, remaining to be paid pursuant to the terms and conditions of agreements for financing the costs of the special energy improvement projects for which the Special Assessments were levied; provided,

however, that the amounts of Special Assessments remaining to be collected shall not exceed the amounts of the Special Assessments originally levied. Upon its receipt of that certification from the ESID, the City shall cause the Special Assessments levied on, and to be collected against, the property to be reduced so that the Special Assessments remaining to be collected shall equal the amount certified to the City by the ESID. The City shall cause the reduction described in the preceding sentence to be certified to the County Fiscal Officer no later than the next-to-occur last date on which municipal corporations may certify special assessments to the County Fiscal Officer. Except as specifically provided in this Agreement to the contrary, no other action pursuant to any provision of this Agreement shall abate in any way the payment of the Special Assessments by the owners of property or the transfer of the Special Assessments by the City to the person directed in the applicable Addendum.

- (e) Reduction of Special Assessments. The Parties agree that the Special Assessments levied in connection with any Addendum, by the agreement of the parties to the Addendum and the owner of real property subject to the Addendum, may be subject to periodic reduction. If the Special Assessments levied in connection with any Addendum shall be subject to periodic reduction, the Addendum specifically shall state that the Special Assessments are subject to periodic reduction and provide the method by which the Special Assessments shall be reduced from time to time. Without limitation, a periodic reduction method may include annual certification by the City to the County Fiscal Officer, prior to the last date on which municipal corporations may certify Special Assessments to the County Fiscal Officer to be collected in the succeeding calendar year, of a reduction in the amount of unpaid assessments to be collected in the succeeding calendar year.
- (f) Assignment of Special Assessments. The City shall account for each Special Assessment governed by this Agreement separately in accordance with the City's customary accounting and fiscal practices in effect from time to time, and in accordance with all applicable laws and regulations. The City hereby assigns to each person named as an assignee in any Addendum, as applicable, (collectively, the **Lenders**) all of its right, title and interest in and to, and grants to each Lender a security interest in: (i) the Special Assessments received by the City under any Addendum to this Agreement which specifies that the Lender is to receive those Special Assessments, (ii) any Special Assessment funds or accounts established for the special energy improvement projects of the ESID with respect to, and to the extent of, the Special Assessments which have been assigned to the Lender pursuant to any Addendum (if applicable), and (iii) any other property received or to be received from the City related to any Special Assessments levied in connection with any Addendum to this Agreement specifying that the Lender is to receive those Special Assessments.
- (g) Transfer of Special Assessments. Promptly following, but not later than 14 calendar days, after receipt from the County Treasurer of any final settlement relating to Special Assessments for which an Addendum has been executed by the Parties in accordance with this Agreement, the City shall deliver to the Lender

named in the applicable Addendum, all such Special Assessments. The City shall deliver the Special Assessments to the applicable Lender in accordance with all Addenda to this Agreement.

Obligations Unconditional; Place of Payments. The City's obligation to transfer the Special Assessments to the Lenders under Section 2.2 of this Agreement shall be absolute and unconditional (to the extent permitted by law), and the City shall make such transfers without abatement, diminution, or deduction regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment, or counterclaim which the City may have or assert against the Lender, the ESID, the owners of real property on which the Special Assessments are levied, or any other Person; but the City's obligation to transfer the Special Assessments is limited in all cases to amounts actually received by or on behalf of the City as Special Assessments.

Appropriation by the City; No Further Obligations. Upon the City's receipt of each Addendum to this Agreement, all of the Special Assessments received or to be received by the City shall be deemed to have been appropriated to pay the City's obligations under this Agreement. During the years during which this Agreement is in effect, the City shall take such further actions as may be necessary or desirable in order to appropriate the transfer of the Special Assessments actually received by the City in such amounts and at such times as will be sufficient to enable the City to satisfy its obligations under this Agreement; but the City shall not be responsible for the costs and expenses of any collection or enforcement actions, except to the extent of any Special Assessments actually received by the City. The City has no obligation to use or apply to the payment of the Special Assessments any funds or revenues from any source other than the moneys actually received by the City as Special Assessments; but nothing in this Agreement shall be deemed to prohibit the City from using, to the extent that it is authorized to do so, any other resources for the fulfillment of any of this Agreement's terms, conditions, or obligations.

The City, to the extent required by law, shall annually appropriate the amounts received as Special Assessments under this Agreement, including the Addenda, to pay the City's obligations under this Agreement.

ESID Assignment of Interest in Special Assessments. To secure the transfer of the appropriate Special Assessments by the City to Lenders, and in accordance with the Special Assessment Act, the ESID hereby assigns, transfers, sets over, and shall pay any and all right, title, and interest in and to the Special Assessments actually received by or on behalf of the City that it may have to the appropriate Lender. The ESID does not assign, transfer, set over, or pay any of its right, title, or interest in or to any Special Assessments or portions of any Special Assessments actually received by or on behalf of the City which, pursuant to the terms of this Agreement and any Addendum to this Agreement are payable to the ESID, with all such right, title, and interest being retained by the ESID.

ARTICLE III: REPRESENTATIONS AND WARRANTIES

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

- (a) It is a municipal corporation, duly organized, and validly existing under the Constitution and applicable laws of the State and its Charter.
- (b) It is not in violation of, or in conflict with, any provisions of the laws of the State or of the United States of America applicable to the City that would impair its ability to carry out its obligations contained in this Agreement.
- (c) It is legally empowered to execute, deliver, and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. That execution, delivery, and performance does not and will not violate or conflict with any provision of law applicable to the City, including its Charter, and does not and will not conflict with, or result in a default under, any agreement or instrument to which the City is a party or by which it is bound.
- (d) It, by proper action, has duly authorized, executed, and delivered this Agreement, and the City has taken all steps necessary to establish this Agreement and the City's obligations under this Agreement as valid and binding obligations of the City, enforceable in accordance with their terms.
- (e) There is no litigation pending, or to its knowledge threatened, against or by the City in which an unfavorable ruling or decision would materially adversely affect the City's ability to carry out its obligations under this Agreement.
- (f) The assignment under Section 2.2(f) is a valid and binding obligation of the City with respect to the Special Assessments actually received by the City in connection with this Agreement.

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

- (a) It is a nonprofit corporation and special improvement district, duly organized, and validly existing under the Constitution and applicable laws of the State.
- (b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the ESID that would impair its ability to carry out its obligations contained in this Agreement.
- (c) It is legally empowered to execute, deliver, and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the ESID's knowledge, that execution, delivery, and performance does not and will not violate or conflict with any provision of law applicable to the ESID and does not and will not conflict with, or result in a default under, any agreement or instrument to which the ESID is a party or by which it is bound.
- (d) It, by proper action, has duly authorized, executed, and delivered this Agreement, and the ESID has taken and all steps necessary to establish this Agreement and the ESID's obligations under this Agreement as valid and binding obligations of the ESID, enforceable in accordance with their terms.

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

ARTICLE IV: EVENTS OF DEFAULT AND REMEDIES

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

- (a) The City shall fail to transfer, or cause the transfer of, any of the Special Assessments to the applicable Lender within the time specified in this Agreement; or
- (b) The City or the ESID shall fail to observe and perform any other agreement, term, or condition contained in this Agreement, and that failure shall continue beyond the earlier of (i) any applicable legal or statutory deadline for performance, or (ii) 60 days (or such longer period to which the notifying Party may agree in writing) after written notice of the failure shall have been given to the City or the ESID, as applicable, by any other Party to this Agreement; except that if the failure is other than the payment of money or compliance with a legal or statutory deadline for performance, and is of a nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the City or the ESID, as applicable, institutes curative action within the applicable period and diligently pursues that action to completion;

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

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

- (a) The aggrieved Party or Parties may, on reasonable notice and at reasonable times, have access to, inspect, examine, and make copies of the books, records, accounts, and financial data of the defaulting Party or Parties pertaining to the Special Assessments; or
- (b) The aggrieved Party or Parties may pursue all remedies now or later existing at law or in equity to collect all amounts due and to become due under this Agreement or to enforce the performance and observance of any other obligation or agreement of the defaulting Party or Parties under this Agreement, including enforcement under Ohio Revised Code Chapter 2731 of duties resulting from an office, trust, or station upon the other Parties; provided, however, that nothing in this Agreement is intended to or shall give to the Parties, and they shall not have, the right to accelerate or otherwise declare due and payable any payments of Special Assessments not otherwise then due and payable; and provided, further, that the Parties' damages

under this Agreement (if any) shall be limited to the amount of the Special Assessments actually received by the City following settlement with the County Treasurer, it being agreed that no other funds or property of the City shall be implicated or in any way affected by this Agreement.

No Remedy Exclusive. No remedy conferred upon or reserved to the Parties by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, or now or later existing at law, in equity, or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or be construed to be a waiver of that right or power, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Parties to exercise any remedy reserved to them under this Agreement, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made in this Agreement.

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

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

ARTICLE V: MISCELLANEOUS

Term of Agreement. This Agreement shall be and remain in full force and effect from the date of execution and delivery until such time as the Parties shall mutually agree in a writing signed by each of the Parties to terminate this Agreement. Any attempted termination of this agreement that shall not be in writing and signed by each of the Parties to this Agreement shall be void. Notwithstanding the foregoing, any Party may, by 90 days' prior written notice to the other Parties, prospectively terminate this Agreement (which shall mean that this Agreement shall cease to be effective with respect to all Special Assessments for which the Development Director has not approved a petition by the 90th day following the other Parties' receipt of such notice); provided, that this sentence shall in no way limit or waive the City's continuing obligations with respect to any Special Assessments for which a petition has been approved by the Development Director prior to such date or any existing Addenda, all of which shall continue as binding obligations of the City until the Special Assessments described in each such petition or Addendum have been paid in full.

Litigation Notice. Each Party shall give all other Parties prompt notice of any action, suit, or proceeding by or against the notifying party, at law or in equity, or before any governmental instrumentality or agency, of which the notifying party has notice and which, if adversely determined would impair materially the right or ability of the Parties to finance the special energy

improvement projects. The notifying Party's prompt notice shall be accompanied by its written statement describing the details of the action, suit, or proceeding and any responsive actions with respect to the action, suit, or proceeding taken or proposed to be taken by the applicable Party.

Notices. All notices, certificates, requests, or other communications under this Agreement shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. Any Party, by notice given under this Agreement to the others, may designate any further or different addresses to which subsequent notices, certificates, requests, or other communications shall be sent.

Extent of Covenants; No Personal Liability. All covenants, obligations, and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No covenant, obligation, or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent, or employee of the City, the ESID, the City Council, or the ESID Board, in other than his or her official capacity; and none of the members of the City Council, the ESID Board, or any official executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the covenants, obligations, or agreements of the City or the ESID contained in this Agreement.

Binding Effect. This Agreement shall inure to the benefit of, and shall be binding in accordance with its terms upon, the Parties. This Agreement shall not be assigned by any Party except as may be necessary to enforce or secure payment of the Special Assessments or as may be approved in writing signed by each of the Parties to this Agreement. Any attempt to assign this Agreement except as provided in the previous sentence shall be null and void. This Agreement may be enforced only by the Parties, their permitted assignees, and others, who may, by law, stand in their respective places.

Amendments and Supplements. Except as otherwise expressly provided in this Agreement, with respect to Addenda or otherwise, this Agreement may not be amended, changed, modified, altered, or terminated except by unanimous written agreement signed by each of the Parties. Any attempt to amend, change, modify, alter, or terminate this Agreement except by unanimous written agreement signed by each of the Parties, or as otherwise provided in this Agreement or an Addendum, shall be void.

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

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

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

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

Approved as to form and correctness:

CITY OF CLEVELAND, OHIO

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

NORTHEAST OHIO ADVANCED ENERGY
DISTRICT

By: _____

Name: _____

Title: _____

CITY FINANCE DIRECTOR CERTIFICATE

The undersigned, Finance Director of the City of Cleveland, Ohio, hereby certifies that the City has established or will establish a special assessment fund into which the Special Assessments (as that term is defined in the foregoing Standing Assignment Agreement) received by the City shall be deposited, free from any encumbrances. The Special Assessments represent other revenues in process of collection to the credit of the appropriate fund. The City shall use the moneys deposited in such special assessment fund to meet its obligations under the foregoing Standing Assignment Agreement. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Finance Director
City of Cleveland, Ohio

Dated: _____, 20__

EXHIBIT A
DEFINITIONS

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

Act means Ohio Revised Code Sections 4582.21 through 4582.59, both inclusive, as enacted and amended at the time, and includes Article VIII, Sections 13 and 16 of the Ohio Constitution and any other applicable law pertaining to expenditures for economic development and housing, as the same may be amended, modified, revised, supplemented, or superseded from time to time.

Addendum means an addendum to this Agreement executed and delivered by the City and the ESID under Section 2.2 of this Agreement, and in substantially the form attached to this Agreement as **Exhibit B**.

Agreement means this Standing Assignment Agreement, dated as of _____, 20__, among the City and the ESID, as the same may be amended, modified, or supplemented from time to time under its terms.

City means the City of Cleveland, Ohio, a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State and under its Charter.

City Council means the Council of the City.

County means, as applicable, the County of Cuyahoga, Ohio, a county duly organized and validly existing under the constitution and laws of the State and under its charter.

County Fiscal Officer means the Fiscal Officer of the County.

County Prosecutor means the Prosecuting Attorney of the County.

County Treasurer means the Treasurer of the County.

ESID means the Northeast Ohio Advanced Energy District, Inc., a nonprofit corporation and special improvement district organized under the laws of the State of Ohio, as such ESID may be named or renamed from time to time in accordance with the Special Assessment Act.

ESID Board means the Board of Directors of the ESID.

Initial Plan means the City of Cleveland First Suburbs Development Council Advanced Energy Special Improvement District (Advanced Energy District) Commercial-Industrial Program Project Plan adopted by the City by its Resolution No. 10787-10 adopted on September 20, 2010.

Notice Address means:

- (a) As to the City: City of Cleveland, Ohio
601 Lakeside Avenue, Room 210
Cleveland, Ohio 44114
Attention: Director of Economic
Development
- With a copy to: City of Cleveland, Ohio
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114
Attention: Director of Law
- (b) As to the ESID: Northeast Ohio Advanced Energy District
165 Center Road
Bedford, Ohio 44146
Attention: Jennifer Kuzma,
Executive Director
- With a Copy To: J. Caleb Bell, Esq.
Bricker Graydon Wyatt LLP
100 S. Third Street
Cleveland, Ohio 43215

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

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

Parties means, collectively, the City and the ESID.

Party means, individually, any of the Parties.

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

Plan means the Initial Plan, together with all amendments and supplements to the Initial Plan duly adopted by the City from time to time.

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

Special Assessment Act means, collectively, Ohio Revised Code Section 727.01 *et seq.*, Ohio Revised Code Section 1710.01 *et seq.*, Ohio Revised Code Section 323.01 *et seq.*, Ohio Revised Code Section 319.01 *et seq.*, Ohio Revised Code Section 5721.01 *et seq.*, and related laws, Resolution No. 1078-10 of the City Council adopted on September 20, 2010, approving the Creation Petition, the Initial Plan, and the establishment of the ESID, and each and every Resolution of Necessity, Ordinance to Proceed, and Ordinance Levying Assessments passed, enacted, or adopted by the City with respect to levying special assessments on real property within the ESID.

Special Assessments means all amounts representing or collected in respect of special assessments levied on real property: (i) that is included within the territory of the City and the ESID, (ii) on or for which special energy improvement projects have been or will be implemented, and (iii) that is subject to the terms and conditions of the Plan.

State means the State of Ohio.

EXHIBIT B

FORM OF ADDENDUM

ADDENDUM NO. [] TO ASSIGNMENT AGREEMENT **ASSIGNEE: [THIRD PARTY]**

THIS ADDENDUM NO. [] (the **Addendum**) to the STANDING ASSIGNMENT AGREEMENT by and between the CITY OF CLEVELAND, OHIO, a municipal corporation duly organized and validly existing under the constitution and laws of the State of Ohio (the **State**) and its Charter (the **City**) and the NORTHEAST OHIO ADVANCED ENREGY DISTRICT, a nonprofit corporation and special improvement district duly organized and validly existing under the laws of the State (the **ESID**) (the **Standing Assignment Agreement**) is executed and delivered by the City and the ESID as of the date stated below, all under Section 2.2 of the Standing Assignment Agreement. Capitalized terms used in this Addendum and not defined in the Addendum have the meanings stated in Exhibit A to the Standing Assignment Agreement:

- A. [PROPERTY OWNER], a(n) [ENTITY TYPE] (the **Owner**) has petitioned the City to include its real property located at [ADDRESS AND PPN], having Cuyahoga County Fiscal Officer ID Number of [NUMBER], and being more particularly described as stated in the Petition for Special Assessments for Special Energy Improvement Projects dated as of [DATE] (the **Petition**) (the **Property**) and to add the Property to the territory of the ESID and to levy special assessments on the Property in the amount stated in the Petition and attached to this Addendum as **Schedule 1** (the **Special Assessments**).
- B. On [DATE] the Director of Development, on behalf of the City Council, approved the Owner's Petition and a supplemental plan to the Plan attached to the Petition.
- C. [THIRD PARTY]] (the **Lender**) shall enter into an agreement with the Owner as of the date of this Addendum to provide financing to pay the costs of the special energy improvement projects described in the Owner's Petition (the **Project**).
- D. In consideration of the Lender's provision of funding to pay the costs of the Project, the City, under the Standing Assignment Agreement, shall assign and transfer to the Lender the Special Assessments, all under and in accordance with the Standing Assignment Agreement and this Addendum.

In consideration of the mutual promises and agreements contained in the Standing Assignment Agreement and in this Addendum:

- 1. The City and the ESID acknowledge and agree that all representations and warranties contained in the Standing Assignment Agreement are true and accurate as of the date of this Addendum.
- 2. The ESID certifies that the amount of Special Assessments and dates for collection of the Special Assessments stated on **Schedule 1** to this Addendum is a true and accurate account

of the Special Assessments petitioned for by the Owner and approved by the Economic Development Director on behalf of the City Council.

3. City Council, under its obligation under Ohio Revised Code Section 1710.02(F) and under Section 2.2(b) of the Standing Assignment Agreement, shall levy and collect (or cause to be collected, through the County Treasurer) the Special Assessments on the Property described in the Petition to pay the costs of the Project. Once levied, and pursuant to Ohio Revised Code Section 727.33, the City shall certify the Special Assessments to the County Fiscal Officer for collection following the passage of all applicable legislation, but in any event not later than the last date on which municipal corporations may certify special assessments to the County Fiscal Officer for collection in the next following calendar year occurring in the year immediately preceding the first year for which the Special Assessments shown on **Schedule 1** shall be collected. The City further shall provide notice to the County Fiscal Officer of the adoption of any Ordinance to Proceed or Ordinance Levying Assessments with respect to the Special Assessments in the manner described, and within the time periods prescribed in Ohio Revised Code Section 319.61.
4. The ESID acknowledges and agrees to be bound to perform their respective obligations under the Standing Assignment Agreement with respect to the Special Assessments shown on **Schedule 1** to this Addendum.
5. The City acknowledges its receipt of this Addendum and acknowledges and agrees to be bound to perform its obligations under the Standing Assignment Agreement with respect to the Special Assessments shown on this Addendum. As provided in the Standing Assignment Agreement, by the City's execution and delivery of this Addendum, all of the Special Assessments received or to be received by the City pursuant to this Addendum shall be and hereby are assigned and shall be transferred by the City to the Lender and shall be appropriated to pay the City's obligations under the Standing Assignment Agreement with respect to the Special Assessments for which this Addendum is made.
6. [*As needed*: The Special Assessments subject to this Addendum shall be subject to periodic reduction in accordance with this Section 6.] [*Sample method for reduction; modify as needed*: Not later than 45 days in advance of the deadline for annual certification of special assessments by the City to the County Fiscal Officer, the City or its agent shall calculate the amount of special assessments required to be collected in the succeeding calendar year. The City or its agent shall certify to the County Fiscal Officer a reduction in the special assessments such that as a result of the reduction the amount to be collected for the succeeding calendar year as unpaid special assessments shall equal the amount required for the succeeding calendar year; provided, however, that under no circumstance shall the amount to be collected for the succeeding calendar year as unpaid special assessments exceed the special assessments stated on **Schedule 1** to this Addendum.

The City shall take all such actions as may be permitted by law and are necessary to certify the amount of the reduction to the County Fiscal Officer not later than 45 days in advance of the deadline for annual certification of special assessments. Any failure strictly to follow the procedures in this Addendum, the Standing Assignment Agreement, or the Petition for

the reduction of the special assessments shall not affect the validity of the special assessments or the lien of any amounts so assessed.]

[Balance of Page Intentionally Left Blank]

DATE: [DATE]

CITY OF CLEVELAND, OHIO

By: _____

Name: _____

Title: _____

Approved as to form:

By: _____

Name: _____

Title: _____

DATE: [DATE]

NORTHEAST OHIO ADVANCED
ENERGY DISTRICT

By: _____

Name: _____

Title: _____

CITY FINANCE DIRECTOR CERTIFICATE

The undersigned, Finance Director of the City of Cleveland, Ohio, hereby certifies that the City has established or will establish a special assessment fund into which the Special Assessments (as that term is defined in the foregoing Addendum No. [] to the Standing Assignment Agreement) received by the City shall be deposited, free from any encumbrances. The Special Assessments represent other revenues in process of collection to the credit of the appropriate fund. The City shall use the moneys deposited in such special assessment fund to meet its obligations under the foregoing Addendum No. [] to the Standing Assignment Agreement. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Finance Director
City of Cleveland, Ohio

Dated: [DATE]

SCHEDULE 1 TO ADDENDUM NO. []
ASSIGNEE: [THIRD PARTY]

SCHEDULE OF SPECIAL ASSESSMENTS

The property to which this Addendum No. [] applies and on which the special assessments shown below are to be levied is located at the commonly used mailing address [ADDRESS], with Cuyahoga County Fiscal Officer ID Number: [NUMBER], and more particularly described as stated in the Petition for Special Assessments for Special Energy Improvement Projects dated as of [DATE] (the **Property**). The special assessments to be levied by the City of Cleveland, Ohio against such Property shall be in the amount and shall be due on the dates shown below and as and when collected shall be paid to the [THIRD PARTY]:

Special Assessment Payment Date¹	Special Assessment Amount²

¹ Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified above are subject to adjustment by the Cuyahoga County Fiscal Officer under certain conditions.

² Pursuant to Ohio Revised Code Section 727.36, the Cuyahoga County Fiscal Officer may charge and collect a fee in addition to the amounts listed in the above schedule.