

## UTILITY COST REDUCTION PROGRAM AGREEMENT

### PARTIES

This Utility Cost Reduction Program Agreement (the "Agreement") is entered into as of the 23rd day of March, 2015 (the "Effective Date"), by and between the Board of Education of the Brecksville Broadview Heights City School District, ("District"), and Effective Utility Services, L.L.C., an Ohio limited liability company ("Provider").

### RECITALS

**WHEREAS**, District owns and operates various schools and other educational-related facilities in Brecksville and Broadview Heights, Cuyahoga County, OH, 44141 and 44147; and,

**WHEREAS**, currently, the electricity needed for District's operation of said facilities is conveyed by and through equipment owned, operated and maintained by The Illuminating Company, which Company charges the District a general service secondary tariff to deliver electricity from the Interconnecting Utility Provider to the District's facilities; and,

**WHEREAS**, by reason of the District's arrangement with The Illuminating Company, the District is unable to purchase electricity it uses at the general service primary rate but rather the less favorable general service secondary rate; and

**WHEREAS**, District seeks to save money by engaging Provider to design, construct, install, and maintain a utility service conversion which qualifies for general service primary rate via The Illuminating Company's Schedule of Rates for Electric Service with the Public Utilities Commission of Ohio, and District desires to access electricity through Provider's conveyance of electricity at the fees and under the terms as agreed; and

**WHEREAS**, Provider has analyzed District's energy usage and has represented to District that conversion to a delivery system that qualifies for general service primary rate will result in an expected \$39,000.00 annual savings to the District by reason of the more favorable rates and conditioning fees; and

**WHEREAS**, Provider provides the service to install and maintain its own Equipment solely to convey electricity and not to sell electricity to the District;

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

### **I. DEFINITIONS**

**1.1 Defined Terms.** The capitalized terms listed in this Agreement shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in singular or the plural or in the present or past tense. Other terms used in this Agreement but not listed in this Article shall have meanings as commonly used in the English language.

- 1.2 **“District’s System”** means all wiring meters, service panels and other related electrical Equipment, components or devices existing on District’s side of the Provider’s Equipment as depicted in the Construction Documents.
- 1.3 **“Construction Documents”** include this Agreement, all documents listed on Appendix 1, the documents attached to this Agreement, items required by the District, the plans and specifications for the project, and any other project document or modification to these Construction Documents issued after execution of this Agreement including all change orders. The intent of the Construction Documents is to include all items necessary for and affecting the proper execution and completion of Provider’s work. The Construction Documents are complementary, and what is required of one shall be as binding as if required by all. All work as called for in the Construction Documents that is intended or implied or related to the work is included in this Agreement.
- 1.4 **“Energy”** means the electrical energy in kilo-watt-hours (kWh) registered on the Interconnecting Utility billing meter, consumed by the District during the Term of this Agreement.
- 1.5 **“Equipment”** means electrical Equipment including, but not exclusively the transformers, poles, switches, wiring and all facilities and associated Equipment, as depicted on the Construction Documents, necessary to connect to the Point of Delivery that conveys the Energy under this Agreement, including any telemetering, communications, and data acquisition apparatus that is necessary for the effective operation of the Equipment within the regulations and requirements of the local Interconnecting Utility Provider in effect on the Effective Date. The Equipment may include communication and data transmission (telemetering) amenities operable from any single location designated by the Provider, from time-to-time, in addition to those required by the Interconnecting Utility.
- 1.6 **“Interconnecting Utility”** means the Illuminating Company, a subsidiary of FirstEnergy Corp., or any other Interconnecting Utility or corporation that provides electrical Energy to the area where the District is located.
- 1.7 **“kW” and “kWh”** mean kilowatt and kilowatt hour respectively.

## II. PROJECT WORK

- 2.1 **Project Description.** Provider provides the service to design, construct, install, commission, operate, and maintain Equipment solely to convey electricity and not to sell electricity to the District. Provider shall own the Equipment. District shall have no ownership interest in the Equipment, nor shall the Equipment be considered a fixture to District’s property for any reason. The District shall not do or permit to be done anything that will invalidate any fire, extended coverage or other insurance covering the Equipment. The Provider and the District shall comply with all state and federal laws related to the health and safety of persons and property and shall immediately report to the other any damage, loss or injury that may impact or endanger the Equipment.

- 2.1.1** Provider agrees to design, construct and install the Equipment in a commercially reasonable manner and in accordance with the National Electrical Code (NEC) as applicable. The installation of the Equipment shall be as described in the Construction Documents.
  - 2.1.2** "Completion Date" means the date that the Equipment is constructed in accordance with this Agreement and is ready to convey Energy to the District, no later than one (1) year from the Effective Date.
  - 2.1.3** If Provider is delayed at any time in the commencement or progress of the installation of the Equipment and related work by the District's act, omission, or negligence, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond Provider's control, then the Completion Date shall be extended for such reasonable time of such delay.
- 2.2 Permits and Licensing.** Provider shall be responsible for acquiring all consents, approvals, permits and licenses necessary for the design, construction, installation, commission, operation and maintenance of the Equipment, and to the Interconnecting Utility. District agrees to execute such forms and applications, etc., to the extent necessary to obtain said approvals, consents, permits and licenses.
- 2.3 Delivery.** Provider shall convey the Energy to District from the Point of Delivery.

  - 2.3.1** "Point of Delivery" means the point of interconnection between the Interconnecting Utility overhead wires and the Equipment where Energy is received from the Interconnecting Utility as depicted in the Construction Documents.
  - 2.3.2** Provider shall arrange, be responsible for, and pay for costs associated with delivery of Energy from the Point of Delivery to the District's System, including all fees and costs imposed by the Interconnecting Utility and/or the local Authority having Jurisdiction for the submission, review, or approval of the interconnection and review of associated Construction Documents.
  - 2.3.3** To the extent that Energy is available from the Interconnecting Utility, Provider shall convey such Energy to District, and District shall accept from Provider, all Energy delivered by the Equipment. Interconnecting Utility's failure to provide Energy for any reason other than due to the negligence or other fault of Provider, as cause in part or in whole of any damages or claim shall not cause Provider any liability to District under any circumstance.
- 2.4 Operation and Maintenance.** Provider will be responsible for all operation, maintenance, and repairs to the Equipment during the Term of this Agreement.

  - 2.4.1** Provider will give District reasonable notice of any scheduled maintenance or repair activity prior to any such scheduled maintenance or repair. Provider shall give District reasonable advance notice of any test, and District may observe the

test and conduct its own tests, at District's expense, to verify Provider's procedures and results.

**2.4.2** Provider will notify District within a reasonable time following the discovery of any material malfunction or emergency condition in the operation of the Equipment, or of an interruption in the supply of Energy from the Equipment. Provider will commence repairs and restore the supply of Energy, within a reasonable time upon Provider's discovery of any of such conditions.

**2.5 Equipment Access.** District hereby grants Provider, its subcontractors, agents, affiliates and other assigns exclusive access to the Equipment, for the term of this Agreement, for the purpose of installation, operation and maintenance of the Equipment.

**2.5.1** District shall keep access open to the Equipment for the Provider. If District fails to provide access after reasonable notice, Provider has the right to have such work performed at such cost to the District as is reasonably necessary for access. District shall promptly reimburse Provider for such costs.

**2.5.2** If payment is not received within thirty (30) days of receipt of Provider's invoice for reimbursement, the District shall be deemed in default of this Agreement.

**2.6 Commissioning.** Upon installation of the Equipment, Provider will arrange for and obtain all required agency and Interconnecting Utility inspections and approvals. After obtaining all the successful inspection reports, Provider will copy these reports to District. At Completion Date, Provider will give notice to the District, energize the Equipment, and begin conveying Energy to the District.

**2.7 Training.** Provider will schedule and conduct system orientation and training session(s) as needed with District's personnel in order to familiarize District's personnel with the Equipment. This session will review Equipment components, operational characteristics, normal upkeep, and the manufacturer-provided documentation. Provider will review and demonstrate system start-up and shut-down procedures. The District shall notify the Provider anytime that the District has new personnel on board so that the Provider can meet with the new individual(s) in order to familiarize these new personnel with the Equipment.

**2.8 Changes.** To the extent that District requests any changes to the installation of the Equipment from the description contained in the Construction Documents, such additional services or work to be performed shall be set forth in writing between Provider and District, and District shall pay to Provider for any increased costs as a result of any changes or additional services or work to be performed.

**2.9 Limitations on Use.** District may only use Energy for District's own use, and not for re-sale; re-distribution, or re-transmission of any sort. District may not permit or suffer any use of the Equipment without written permission of Provider.

**2.10 Limitations on Equipment.** District may not load the Equipment to a capacity greater than that indicated below in any billing cycle at any time during the Term of this Agreement.

High School (T1):	1000 KVA
High School (T2):	500 KVA
Middle School:	500 KVA
Concession:	225 KVA
Elementary School:	75 KVA
Board Office	45 KVA

**III. CONDITIONS PRECEDENT TO PROVIDER'S OBLIGATIONS**

**3.1 Effect.** The following terms shall be Conditions Precedent of the essence to Provider's further performance of its obligations under this Agreement.

**3.1.1** Provider secures all necessary financing for the design, construction, installation, commissioning, operation, and maintenance of the Equipment, upon terms and conditions acceptable to Provider in Provider's sole judgment.

**3.1.2** Provider secures all necessary approvals, permits, and interconnection agreements as set forth in Section 2.2 above;

**3.1.3** No existing or proposed laws, regulations or conditions, including but not limited to environmental laws, permitting requirements, and preexisting liens, prevent Provider's construction, installation, commissioning, operation, and maintenance of the Equipment, and is economically viable as planned;

**3.1.4** Provider reasonably can interconnect the Equipment to the District's System; District has provided for lawful access to and required use of the Facilities to Provider; District maintains and operates the District's System in a commercially reasonable manner during the Term and keeps the District's System in good order and repair at District's sole expense.

**IV. FAILURE OF DISTRICT TO APPROPRIATE FUNDS**

**4.1 Effect.** The following terms shall be Conditions Precedent of the essence to District's further performance of its obligations under this Agreement.

**4.1.1** In the event that the Termination Fee becomes due and owing to Provider by the District and, further in the event the District fails to appropriate sufficient funds to pay the Termination Fee, then in that event, the District agrees that any funds appropriated for the same or similar services shall be directed to Provider and/or subject to a lien by Provider to the extent of the Termination Fee.

## V. PRICING

- 5.1 Conditioning Fee.** “Conditioning Fee” means the price to be paid by the District to Provider for the Energy that passes through the Equipment.
- 5.1.1** Provider agrees to convey Energy and nothing else to District and District agrees to accept all Energy at the Conditioning Fee at a fixed rate of \$0.019 per kWh for the Term of this Agreement, subject to budget appropriation.
- 5.1.2** The minimum monthly quantity invoiced shall be for 300,000 kWh at the Conditioning Fee of \$0.019 per kWh, for a minimum monthly cost of \$5,700.00, regardless of whether such energy is used. No credit shall accrue for future months.
- 5.1.3** The maximum cumulative kWh charged at \$0.019 per kWh over the Term of this Agreement, shall be 36,000,000 kWh, after which pricing of the Conditioning Fee will be reduced to a fixed rate of \$0.00575 per kWh.
- 5.1.4** The District shall provide to the Provider a copy of such fiscal officer certification of funds as may be issued related to this Agreement, and Provider shall not be required to perform beyond the certified funds or period.
- 5.1.5** At any time the District fails to timely pay the Conditioning Fee, following reasonable notice to cure, including by the District’s discretion or by the District’s failure to appropriate, Provider shall be entitled to the Termination Fee calculated at the due date of the Conditioning Fee not paid; upon Provider’s demand.
- 5.2 Quantity.** The quantity of Energy consumed by District shall be actual use calculated by reference to the amount recorded by Metering. “Metering” means any Equipment to measure Energy conveyed through Provider’s facilities.
- 5.2.1** Provider shall apply to the Interconnecting Utility to seek approval to be automatically copied on the District’s monthly bill. Should this not be approved by the Interconnecting Utility, the District shall provide an Interconnecting Utility bill to the Provider within 15 (fifteen) days of receipt of the monthly bill from the Interconnecting Utility. The District agrees to give the Provider access to duplicate bills, if available, from the Interconnecting Utility.
- 5.2.2** The District shall pay the Provider the minimum monthly cost as indicated in paragraph 4.1.2 on the 15<sup>th</sup> of every month for the term of this agreement. Based upon the Interconnecting Utility billing data referred to in paragraph 4.2.1, the Provider shall develop and maintain a spreadsheet that will allow any excess kWh over the minimum monthly billing to be reconciled on a quarterly basis.

This spreadsheet will be shared with the District on a quarterly basis and sent along with the reconciled billing. Payments are due and payable upon receipt of the Provider's invoice. Amounts unpaid 30 days after the invoice date shall bear interest from the date payment is due at a rate of 1.5% monthly or so as not to exceed the legal rate prevailing at the principal place of business of the Provider.

**5.2.3** Provider shall invoice District monthly for Energy conveyed. District shall pay Provider after the District receives Provider's invoice which payment shall be processed promptly in accordance with the District's procedures. Payment may be electronic fund transfer or check. District's payment made more than twenty (20) Business Days after the District receives Provider's invoice shall be subject to a 1% late charge for each month such invoice remains unpaid, plus interest at a rate of 4% per annum for the unpaid balance.

**5.3 Record Inspection.** Each party has the right, after five (5) days' advance notice to the other party, at its sole expense and during normal business hours, to examine the applicable records of the other party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, District shall provide to Provider copies of statements evidencing the quantities of Energy delivered to the Point of Delivery. District shall provide to Provider copies of statements from the Interconnecting Utility related to all charges.

**5.4 Change In Law.** "Change In Law" means the adoption, promulgation, modification or re-interpretation by a federal or state government entity or any political subdivision thereof, including the Public Utilities Commission of Ohio, after the Effective Date of this Agreement, of any applicable federal, state or local law including statute, regulation, by-law, ordinance, code, or instruction, and related consent, approval, license, or permit, which materially affects the design, construction, installation, operation, or maintenance of the District's System, Provider's Equipment, Interconnecting Utility, or independent system operator or other regional transmission organization.

**5.4.1** Provider shall deliver notice to District after the occurrence of a Change in Law applicable to this Agreement, which notice shall describe the Change in Law, its effect on Provider and any commercially reasonable remedial measures available.

**5.4.2** If Provider and District do not agree on a remedial measure following good faith negotiations, then they shall submit the matter to mediation and if still not resolved then to final and binding arbitration pursuant to the applicable rules of the American Arbitration Association.

**5.5 Taxes.** Each party shall be responsible for, and shall pay when due, those taxes imposed upon it by law, including sales and use, real or personal property, excise, business privilege, or any other tax, assessment or charge imposed by any governmental entity property, governmental charges, licenses and fees with respect to the party's

performance pursuant to this Agreement. Each party shall use reasonable efforts to administer this Agreement in a manner that will minimize the imposition of Taxes.

**5.6 Deposit.** The District has previously paid a deposit as set forth in a heretofore agreed upon Letter of Intent. The deposit will be returned to the District at the end of the initial Term. Should the District terminate this Agreement prior to completion of the initial Term, the deposit will be held by the Provider as part of and subtracted from the total Termination Fee. Upon completion of the initial Term, the deposit will be returned by one of the following methods at the discretion of the District:

1. As payment toward the final month(s) Conditioning fee equating to the total deposit, or;
2. As a check equating to the total amount of the Deposit at the end of the initial Term.
3. If, the District exercises its option to purchase the equipment, under the conditions of Section 6.6: "Option to Purchase", the deposit will be subtracted from the price stipulated in; Section 6.6.

**5.7 Termination Fee.** The Termination Fee shall be calculated by multiplying the minimum yearly kWh's, as defined in Section 5.1.2, times the initial conditioning fee rate, times the total number of years in the Agreement term, less the number of years and/or parts thereof completed plus 1.6 years illustrated as follows:

Termination Fee = Minimum yearly kWh's invoiced X Conditioning Fee Rate X ((Agreement Term - Years and/or parts thereof completed) + 1.6 years)

The Option to Purchase Termination Fee will be equal to 80% of the Year-Ten Termination Fee

## **VI. TERM AND TERMINATION**

**6.1 Term.** The initial Term of this Agreement commences on the Effective Date and shall continue for Ten (10) full years from the Completion Date. If Completion Date is not achieved within 180 days from the Effective Date, either party may terminate this Agreement without recourse.

**6.2 Provider's Default.** Notwithstanding any other provision of this Agreement, the District shall allow Provider to cure any default by allowing Provider, or a Lender, to cure within the time periods set forth below following any notice of default, including allowing a Lender to take possession of the Equipment.

**6.2.1** If Provider fails to cure any default within thirty (30) days of any notice of default, then the District may, upon written notice to the Provider, and without prejudice to the other remedies the District may have, (i) correct the deficiencies at Provider's cost, or (ii) terminate this Agreement.



- 6.2.2** If such default results in an emergency or in a disruption of the conveyance of electricity to the District, Provider shall initiate within twenty-four (24) hours, and otherwise promptly cure such default upon receipt of written notice from the District. If Provider fails to promptly cure such emergency or disruption, then District may correct the deficiencies at Provider's cost.
- 6.3 Equipment Status.** In addition to any other rights and remedies available at law, upon termination or expiration of the Agreement, if the District has not exercised its Option to Purchase under section 6.6 below, including default by either party, the Provider shall i) remove all or part of the Equipment; or ii) transfer ownership of the Equipment to a third party. The District shall not interfere with Provider's access during the removal process.
- 6.4 "Force Majeure"** means an event or circumstance or combination of events or circumstances beyond the reasonable control of the party claiming Force Majeure including, but not limited to acts of God; strikes, lockouts, industrial and/or labor disputes, difficulties with bans, blockages or picketing; terrorism, sabotage, war or riots; explosions; extreme weather conditions; other actions of the elements such as floods, earthquakes, lightening or hurricanes. The ability to sell Energy at a higher price or purchase Energy at a lower price shall not constitute Force Majeure.
- 6.4.1** If because of Force Majeure either party is rendered wholly or partly unable to perform its obligations under this Agreement, that party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that: the affected party gives the other party notice of the occurrence as soon as practical, and in no event later than two (2) days, after the affected party's knowledge of an event constituting a Force Majeure; the suspension of the affected party's performance is of no greater scope and of no longer duration than is required by the Force Majeure; the affected party uses reasonable efforts to remedy its inability to perform; and the affected party resumes performance of its obligations under this Agreement as expeditiously as possible.
- 6.4.2** The Term of this Agreement shall be extended day-for-day for the time period during which a party is rendered wholly or partly unable to carry out its obligations under this Agreement by a Force Majeure event; provided, however, if the performance of this Agreement by either party is interrupted for more than thirty (30) consecutive days or for an aggregate of more than sixty (60) days in any 24-month period, then the other party may terminate this Agreement upon thirty (30) days' notice.
- 6.5 Disconnection.** "Emergency" means any abnormal interconnection or system condition including, but not limited to, Equipment or transmission limitations and constraints caused by thermal limits, stability, voltage, or loop flows, that requires automatic or immediate manual operation to prevent or limit loss or damage to Provider's system or

supply, from the interconnected electric system, or could otherwise pose a threat to public safety.

**6.5.1** In the event of an Emergency, either party may disconnect the Equipment immediately and provide notice to the other party as soon as practicable. Notice under this section does not constitute notice of default.

**6.5.2** Except in the case of an Emergency, District may not disconnect the Equipment from the District's system without prior notice to the Provider. To the extent that District requires disconnection for any reason, Provider shall do so upon reasonable notice and District's payment of Provider's costs and fees.

**6.6 Option to Purchase.** District shall have the right to purchase the Equipment at the end of the Term, or sooner in the event of Provider's bankruptcy, insolvency, receivership, dissolution, assignment for the benefit of creditors or other material financial event significantly impairing or preventing Provider's ability to perform for payment of the Termination Fee described in paragraph 5.7 above.

**6.6.1** Such option shall be exercised by written notice to Provider from District which notice should be delivered no later than six (6) months prior to the intended purchase date. Provider will exercise its best efforts to assist in assignment of Provider's financing at the District's option.

**6.6.2** Upon the completion of the purchase, Provider owes no further obligation under this Agreement, and Purchase shall not include any service by Provider of any sort, or leave any remainder of exposure for, duty by, or liability to Provider.

## **VII. LIABILITY**

**7.1 Indemnification.** Provider to the extent permitted under law, shall indemnify, defend and hold harmless the District from any loss, claim, legal action, damages, liabilities, and expenses in connection with the loss of life, bodily or personal injury, or property damage arising from the omission, act, or activity of the Provider, in part or in whole, its agents, employees, subcontractors or materialmen in performance of this Agreement.

**7.2 [Deleted]**

**7.3 Encumbrances.** District agrees and acknowledges that the Equipment is not a fixture.

**7.3.1** Provider, with notice to the District, may, by way of security, charge, or otherwise, encumber to any assignee, mortgagee or holder of a security interest, collectively ("Lender,") Provider's interests under this Agreement for the purposes of financing the construction, operation, and maintenance of the Equipment, but in no event shall Provider enter into any agreement with a Lender or grant any security interest or other encumbrance that fails to retain the equitable right of the District to the benefit of the Equipment in the event of Provider's default with Lender, consistent with the Termination Fee provisions

herein. Provider shall promptly provide District with any default notice Provider receives from Lender.

The parties further agree that in the event of Provider's assignment to a Lender as collateral security:

(i) Neither the District nor the Lender as assignee, will modify or cancel this Agreement without the prior written consent of the other;

(ii) the Lender shall have the right, but not the obligation, to do any act required to be performed by the Provider under this Agreement, and any such act performed by the Lender shall be as effective to prevent a default as if done by Provider itself;

(iii) no default which requires the giving of notice to Provider shall be effective unless a like notice is given to the Lender, and if District becomes entitled to exercise its remedies as provided in this Agreement due to an uncured default by Provider, District shall not exercise such remedies unless it has first given notice of such uncured default to Lender with an opportunity to cure which shall be governed by the provisions of Section 5.2 herein. District may provide such notice of default to Lender simultaneously with the notice given to Provider under Section 5.2 herein. Provider shall inform District of all Lenders' contact information.

(iv) in case of termination of this Agreement as a result of any default or upon bankruptcy of Provider, District shall give prompt notice to the Lender of such termination, and, upon written request by the first priority Lender within thirty (30) days after receipt of District's notice, agree to enter into a new Utility Cost Reduction Service Agreement with such Lender on the same terms and conditions as this Agreement and for the period that would have been remaining under this Agreement, but for the termination provided that the Lender has cured any prior uncured default and reimbursed the District for its costs in curing the default, and provided further that District has not secured another person or company to continue in the performance of the services in accordance with Section 5.2 herein; and

**7.3.2** The parties further agree that they shall at any time during the term of this Agreement within ten (10) days after receipt of a notice from the other party, execute a written statement certifying that this Agreement is unmodified and in full force and effect (or modified and stating modification) and that no defaults exist (or defaults exist and the nature of such defaults). Except as otherwise stated, this Agreement inures to the benefit of the parties, their successors and permitted assigns.

**7.4 Insurance Coverage.** Each party shall, at its sole cost and expense, shall maintain insurance coverage as follows:

**7.4.1** General Liability Insurance with minimum limits of \$1 million for each occurrence; \$1 million for personal injury; and \$2 million aggregate.

**7.4.2** Provider shall maintain property, fire and casualty insurance for an amount sufficient to reimburse the Provider for the fair market value of the Equipment. District shall maintain property, fire and casualty insurance for an amount sufficient to reimburse the District for damage to the Equipment premises or other areas.

**7.4.3** To the extent permitted by law or the carrier, each party shall name the other as an additional insured on insurance coverage specified hereunder and shall furnish Certificates of Insurance evidencing compliance with this Section and shall provide notice of any material change, modification or cancellation of any insurance policy.

**7.4.4** Insurance coverage required by this Section may be provided under blanket insurance policies or may be self-insured so long as coverage amounts are consistent with the requirements of this Section.

**7.5** The Provider shall be responsible for the total installation as designed and agreed upon herein. The Provider is not responsible for electrical system components on the District's System, unless caused by Provider.

## **VIII. CONSTRUCTION**

**8.1 Governing Law.** This Agreement shall be governed by the laws of the State of Ohio. Venue for any dispute resolution shall be in Erie County, Ohio.

**8.2 Warranties.** No warranty express or implied is made under this Agreement, provided, however, that nothing within this Section 8.2 shall be deemed as a limitation of the obligations of and the services to be provided by Provider and/or other promises contained in this Agreement. District shall be entitled to the warranties as are specifically set forth in the equipment manufacturers' warranties upon the District's exercise of its Option to Purchase as described in section 6.6 above.

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

**8.4 Changes in Writing.** No modification or amendment of all or any part of this Agreement shall be valid unless it is reduced to writing that expressly states that the parties thereby agree to a modification or amendment as applicable and such writing is signed by both parties.

- 8.5 No Third-Party Beneficiary.** Nothing in this Agreement, or any action taken hereunder, shall be construed to create any duty, liability or standard of care to any person other than to the other party. Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture or impose a trust or partnership duty, obligation or liability between or among parties.
- 8.6 Captions.** All titles, subject headings, section and clause headings, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement.
- 8.7 Entire Understanding.** Any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived, each party being represented by counsel. This Agreement and the Appendices hereto constitute the entire understanding between the parties with respect to the matters set forth herein and supersedes all previous claims, Agreements, representations or understandings, whether oral or written.
- 8.8 Multiple Originals.** This Agreement may be executed in one or more originals, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.
- 8.9 Notice.** To the extent that this Agreement requires that notice be given to the other party, notice shall be given in writing to the following persons, in addition to any other representatives:

To the District:

Richard Berdine, Treasurer  
 Brecksville-Broadview Heights City School District  
 6638 Mill Road  
 Brecksville, OH 44141  
 (440) 740-4000

To the Provider:

Glen Ginesi  
 Effective Utility Services  
 PO Box 471  
 205 Sprowl Road  
 Huron, OH 44839  
 (419) 433-7048  
 glen@bestuseofenergy.com

IN WITNESS WHEREOF, each of the parties has executed and delivered this Agreement as of the Effective Date.

Brecksville Broadview Heights City School District  
 By: \_\_\_\_\_

Mark Jantzen, President, Board of Education,  
 Brecksville-Broadview Heights City School District  
 6638 Mill Road  
 Brecksville, OH 44141  
 (440) 740-4000

Effective Utility Services, L.L.C., as Provider

By: \_\_\_\_\_

Glen Ginesi  
 Effective Utility Services  
 PO Box 471  
 205 Sprowl Road  
 Huron, OH 44839  
 (419) 433-7048  
 glen@bestuseofenergy.com

## APPENDIX 1

### Construction Documents

1. Site Plan
2. Floor Plan(s)
3. Single Line Diagram
4. Details, Schedules, and Notes
5. Specifications