



City Council Agenda

Monday, September 11, 2023 at 7:00 pm

6550 N. High Street, Worthington, Ohio 43085

1. Call to Order
2. Roll Call
3. Pledge of Allegiance

Approval of the Minutes

4. Approval of Minutes

July 10, 2023 Regular Meeting

Recommendation: Approve as presented.

Public Hearings on Legislation

5. Ordinance No. 17-2023 - Determining to Proceed with Project (DLZ PACE Project)

An Ordinance Determining to Proceed with the Acquisition, Construction, Installation, Equipping, and Improvement of Certain Public Improvements in the City of Worthington, Ohio in Cooperation with the Columbus Regional Energy Special Improvement District (6121 Huntley Road Project)

Executive Summary: This Ordinance determines to proceed with the acquisition, construction, installation, equipping, and improvement of certain public improvements by DLZ Corporation at 6121 Huntley Road, in cooperation with the Columbus Regional Energy Special Improvement District.

Recommendation: Approve as presented.

6. Ordinance No. 18-2023 - Levying Assessments & Authorizing Agreement for Collections (DLZ PACE Project)

An Ordinance Levying Special Assessments for the Purpose of Acquiring, Installing, Equipping, and Improving Certain Public Improvements in the City of Worthington, Ohio in Cooperation with the Columbus Regional Energy Special Improvement District and Approving Project Documents (6121 Huntley Road Project)

Executive Summary: This Ordinance levies special assessments for the purpose of acquiring, installing, equipping, and improving certain public improvements by DLZ Corporation at 6121 Huntley Road, in cooperation with the Columbus Regional Energy Special Improvement District.

Recommendation: Approve as presented.

Reports of City Officials

7. Policy Item(s)

- a. July & August 2023 Financial Reports

Executive Summary: The financial reports for July and August 22023 are attached.

Recommendation: Motion to accept as presented.

8. Discussion Item(s)

a. Age Friendly Initiative Update

Executive Summary: City Council will be briefed on the Age Friendly Action Plan process and next steps in implementation.

Recommendation: This is an update only; no action is requested at this time.

b. Worthington Pools - Status Update

Executive Summary: An update will be provided regarding the request from Swiminc for financial support of capital improvements at the outdoor pools.

c. Vision Implementation Teams - Status Update

Executive Summary: Time is provided to discuss the current status and next steps for the Vision Implementation Teams.

d. Current Initiatives

Executive Summary: Time is provided, as needed, to discuss the timeline and status of current initiatives. A document displaying the timelines for the initiatives is attached.

e. Pay to Stay Update

Executive Summary: Staff will provide an update on Pay to Stay Legislation.

Recommendation: Staff requests Council direction on the desired approach moving forward.

Reports of Council Members

Other Business

Executive Session

- a. To conference with attorney(s) for the City concerning pending or imminent litigation.
- b. To consider the purchase of property for public purposes or the sale of City property at competitive bidding.

Adjournment

9. Motion to Adjourn



City Council Agenda

Minutes

Monday, July 10, 2023 at 7:00 pm

6550 N. High Street, Worthington, Ohio 43085

1. Call to Order

Minutes:

Worthington City Council met in person on Monday, July 10, 2023. President Robinson called the meeting to order at 7:00 p.m.

2. Roll Call

Minutes:

Members Present: Katherine Brewer, Peter Bucher, Rebecca Hermann, Beth Kowalczyk, Bonnie Michael, Doug Smith, David Robinson

Member(s) Absent:

Also Present: Acting City Manager Robyn Stewart, Assistant City Manager & Economic Development Director David McCorkle, Director of Law Tom Lindsey, Director of Finance Scott Bartter, Planning & Building Director Lee Brown, Director of Parks & Recreation Darren Hurley, Acting Chief of Police Eric Grille, Chief of Fire & EMS Mark Zambito, Management Assistant Ethan Barnhardt

3. Pledge of Allegiance

Minutes:

President Robinson invited those in attendance to stand and recite the Pledge of Allegiance

New Legislation - Ordinance(s)

4. Ordinance No. 16-2023 Additional Appropriations – General Fund & General Bond Retirement Fund

Minutes:

Introduced by Ms. Michael for Public Hearing on July 17, 2023

Reports of City Officials

5. Discussion Item(s)

a. Worthington Pools

Minutes:

Mr. Hurley introduced the members of the pool working group who have been working

through this issue. Following the June 20th Council presentation by SwimInc, the working group met again, taking in the feedback heard at that meeting and asking SwimInc to discuss those points. In the ordinance that was introduced, it includes funds to begin a process of seeking community feedback and input, via a survey.

Mr. David Mordoh of 294 Hennesey Avenue, introduced himself as a member of the facilities committee, along with other SwimInc representatives in attendance tonight. At the beginning of July, SwimInc was asked to respond to four questions which he overviewed:

1. Can you provide updated revenue and expenditure projections for each of the three renovation options?

He explained how they assume the operational cost for Options 1 and 2 will remain consistent with the current costs of operation without the consideration of inflation, utility costs, and the rising costs of labor. The operational costs for Option 3 will increase given the increased size of the pool water surface area. This will be offset however by the ability to accommodate more patrons.

Revenue (using our existing fee structure) will remain static with Option 1. Options 2 and 3 provide an expanded concession with an increased revenue of \$60K and a year-round community meeting/event space with an increased revenue of \$45K. Option 3 uniquely provides expanded program space with a 50M competitive pool. An estimated \$100K will be generated by expanding our summer competitive program and the hosting of long course (50m) competitive events. These events will impact the greater Worthington community with an annual financial impact of \$125K - \$240K.

2. Can you phase the three options, and if so, which options can be phased and what would this look like, including cost increases? You can assume phasing would include about five million dollars initially with the balance in a second phase.

He described how Options 1 and 2 cannot be phased. It would require \$6.1M to facilitate the phasing of Option 3. Phase one would include the demolition of the north pool, and the replacement of the concessions, bathhouse, and spray park. All utilities would be included in this phase. Phase two would include the balance of Option 3 including escalation to the midpoint of construction (3 years @ 5% per year). Option 3 without phasing \$15.4M; with phasing \$17.3M. A September 2024 start of construction requires a September 2023 decision to begin construction drawings. Mr. Robinson asked for the costs associated with Option 1 and Option 2 for perspective. They were provided by Ms. Hermann (from previous information from Swiminc) as Option 1 - \$10.3M dollars without phasing and Option 2 - \$12.8M. Ms. Hermann also shared that Option 3 was \$15.4M.

3. Would SwimInc lead any level of fundraising to offset the costs of renovations? SwimInc will seek the services of a professional to assist in raising funds in support of the FFE expenses (furniture, fixtures, and equipment) of Option 3.

4. Is SwimInc willing to lead any level of a public campaign in support of a ballot issue if pursued?

SwimInc will seek the services of professionals in support of a ballot issue and provide them with the resources of historical membership and user data. We will provide our program participants with opportunities to volunteer their support.

Ms. Michael asked about Options One and Two and clarified that fundraising would only be

set up if Option Three is being pursued. Mr. Mordoh affirmed that was correct. Mr. Robinson asked for the rationale for there not being fundraising for all of the options. Mr. Mordoh responded that the SwimInc Board met and expressed support for Option Three, so they would need to go back to consider any of the other options. Ms. Michael asked if SwimInc engaged in fundraising, would they be paying for that. Mr. Mordoh said that they are early in the exploratory phase of fundraising, and more professional fundraisers require a retainer and then work on a commission.

Ms. Brewer asked about the cost to facilitate phasing Option Three and if that would be an initial \$6.1 million. Mr. Mordoh said that was correct.

Mr. Smith asked with the phasing cost what timeframe that would be over. Mr. Mordoh responded that it would be within a reasonable amount of time, but he would defer to the architects.

Ms. Kowalczyk asked what is the current revenue for a season at the pool. Mr. Carmen explained how the expansions of concessions and meeting space could expand revenue, so the profits were built into the design and expectation of the kitchens. The current net revenue is to break even and varies from year to year. Any amount above that is set aside for amortization and paying to fix the failure of mechanicals. On average at the end of the season, there is approximately a \$100,000 surplus exceeding expenses. The budget for the full SwimInc operation is approximately \$1.1 million. Ms. Kowalczyk asked how the projections were come up with. Mr. Carmen said the concessions projections were easy based on other operations in the area. Ms. Kowalczyk asked about the calculations for the meeting space revenues. Mr. Carmen responded that they have current spaces they were able to base projections on. Ms. Kowalczyk asked about the expansion of revenue from swim events. Mr. Carmen explained that swim clubs also use outdoor pools, and there are very few 50-meter pools in Ohio. They added equipment in that pool under Option Three to attract age groups they currently lack, additionally, there are opportunities for Worthington to bid on 50-meter events. The design in Option Three allows that pool to be in use for events, while not impacting the other pools.

Mr. Smith expressed that he did not understand why there would not be phasing options for Options One and Two. He asked if Phase One of Option Three was a standalone phase. Mr. Carmen asked the architects to look at phasing without a loss of revenues. Options One and Two cannot be phased, because part of the problem is that the existing pools share mechanical systems, so if you start piecemealing away, you take away from the operations of the systems unless you replace the entire thing. Option Three does allow for phasing.

Ms. Hermann shared how the main things you have to have are the mechanicals, which are failing, and that needs to be the basis moving forward. Mr. Carmen shared how they do not want to operate the pools at the minimum standards, and moving forward and redesigning, all three options are to exceed the minimum performance standards.

Ms. Kowalczyk asked about the bleachers at the potential 50-meter pool and if there would be space for spectators watching. Mr. Carmen said that the drawing is deceptive and it is quite a large deck space for seating to be brought in.

Ms. Michael stated that her biggest concern is funding, and if we go forward with a bond

issue of some sort, she wants to see a lot of support from SwimInc. Mr. Carmen said that they would, but there are IRS concerns about non-profits being involved in any issue to be aware of. They have a legal opinion available that details the extent to which they may be involved in a bond issue.

Ms. Ellen Scherer of 112 East New England Avenue stated how she feels strongly about swimming and a municipal pool is a benefit to so many residents throughout their life spans. Her parents had learned how to swim when they were young and saw that their 7 children learned, too. Her 3 children learned how to swim and her husband did, too, at age 40 - at Worthington Pools. She was a swim instructor and an Arthritis Foundation water aerobics instructor. It contributes to safety, health, and pleasure from childhood to old age. It amounts to vacation for those who are unable to travel. Friendships are made that last a lifetime providing valuable social contact and community that, well, creates community. In addition to this, it is in the City's economic interest and adds to the appeal of living in Worthington. It places us in parity with surrounding municipalities that have pools. City Council must find the means to renovate/reconstruct/repair our community pools. It is so important for the community. She also referenced a New York Times article that lamented the fact that so many children do not know how to swim, and how drowning is a leading cause of death for children from ages 1-4.

Ms. Michael shared that she didn't think there was anybody on the pool committee who does not feel that the outdoor pool is important and has many wonderful values to the community.

Ms. Hermann expressed how the working group did not have prior knowledge of the phasing concept, and that the working group wants to go about doing things the right way which includes soliciting public input on the multiple options available to us. She emphasized that everything we are going to do on this is going to take time, but she hopes we can get some additional information quickly if we need to get something put on the ballot, if that is where it is headed.

Ms. Marian Reynolds of 2464 Merbrook Road asked if there has been consideration of soliciting corporate donations for the pools. Ms. Michael responded that it was part of the fundraising discussion. Ms. Reynolds asked if there was consideration of funding from other communities that utilize the pools. There are a lot of people from other communities that use the Worthington Pools. Mr. Robinson said that folks pay to come and use the pool if they come from other communities, there is also a Joint Recreation District concept that could be utilized. Ms. Michael added that Columbus has a philosophy of not charging for use of the pools that are supported by the City.

Mr. Robinson asked if it makes sense when it comes to the survey and the types of questions to be asked, it would be helpful to talk about and brainstorm. Ms. Hermann replied that part of the budget is to find an expert who knows how to pose questions. She does not feel comfortable coming up with the questions, but she does feel comfortable finding an expert for the survey group. Mr. Robinson advocated Council thinking through the types of questions and the subjects, which clarifies the Council's thinking. Ms. Stewart noted that it helps the Council be supportive of the type of information we want to get from the survey, but we can work with the experts when it comes to writing the specific questions

to get the information we are seeking. Ms. Hermann stated that her understanding, and intention was to not make an immediate decision on financing in the next week's meeting, but rather moving towards the survey to get a sense of doing it as a community as a whole rather than Council making a decision for the community.

b. 2024 Operating Budget & 2024-28 Capital Improvements Program Preview

Minutes:

Ms. Stewart described how, during the months of August and September, the staff's focus begins to turn to the budget process. Before the August recess, the staff likes to check in with the Council to provide an overview of the highlights of what we are observing.

Mr. Bartter outlined how the City completed the 2022 Annual Comprehensive Financial Report, the 2022 audit is completed and did not receive any comments, and we anticipate receiving the Auditor of State Award of distinction this year. For financial transparency, we have taken several steps, including moving to monthly financial reports, adding financial discussions with the Council in both February and July, and dedicating six meetings to budget discussions in the fall. There is also a Citizens Academy night highlighting finance, a series of budget videos, and the Balancing Act interactive budget tool.

He described the current fund balance, looking at both cash on hand (approximately \$22.8 million) and the unencumbered balance (\$15.8 million), which is cash minus commitments. Resolution 70-2017 sets a target of 35-50% of prior year expenditures as an unencumbered fund balance, which we are currently right on target. When examining income tax revenues in recent years, they have increased dramatically since 2020, from \$26.5 million to \$33.2 million in 2022. The cause of this increase was not due to a tax rate change, but rather the success of existing businesses in Worthington. For income tax estimates, we have taken a conservative approach in recent years. In 2023, our income tax collections have continued to rise, and working from home has been a net positive for the City. However, major economic development projects at the mall site and the former Anthem site are currently on hold. He anticipates making a significant adjustment to the 2024 income tax estimate based on three years of over \$30 million in collections but reducing the percentage increase in years 2025-2028. For property taxes, we are projecting a 10-20% increase in 2024 due to the Auditor's re-evaluation.

Mr. Robinson asked how important the income tax is to the City compared to the property tax for total revenue. Mr. Bartter answered that income taxes are about 71% of the City's total General Fund Revenue. Property tax is about 10%.

Mr. Bartter shared how Parks and Recreation revenue increased significantly in 2023, exceeding our estimates for the year. This is leading us to increase the 2024 estimate from \$1.7 million to between \$2-2.1 million. With interest income, rates have increased significantly and vastly outperformed estimates for 2023 and could exceed \$1 million. For 2024, we plan to increase the estimate to \$800,000, as rates are not anticipated to decrease significantly over the past year. With fire protection services, we are planning on Sharon Township passing a levy that would generate an additional \$500,000 for the City.

Mr. Bartter explained that with expenditures, we would be distributing department worksheets to begin assessing requests soon. Our largest expenditure is always personnel

and health and pension costs. We do not have an IAFF contract in place for 2024, so we will be anticipating work to be done on that. We are reviewing compensation for unclassified positions, so that may be an expenditure we are looking at. There may be some expansion of staffing in a few key areas to keep up with current demand. Additionally, we will be evaluating ways to identify potential funding for vision implementation. The Capital Improvements Program is always financially constrained, and we have demands that exceed resources. Additionally, costs continue to rise for projects and equipment, which makes it difficult to estimate costs for the next month or two, let alone the next several years.

Mr. Bartter outlined the proposed process for approval of the City budget, beginning in October and concluding with the adoption of the budget and CIP by December 4, 2023.

Ms. Kowalczyk asked about the CIP and if the increased tax revenue continues to lead to a strained CIP, or if there is an opportunity to have any increases in the plan to support projects. Ms. Stewart replied that we would be looking at that, but the first step would be to cover inflationary costs associated with existing projects and equipment in the CIP. Hopefully, we will have more revenue, but at the same time, we will have higher expenditures which we will need to address.

Ms. Michael wanted to make sure we are still doing the systematic renovation of the City's playgrounds and parks, and bicycle and pedestrian projects are in there. Ms. Stewart said we have a program for regular playground renovations, along with the work being done at McCord Park. Within this five-year plan, we also have some major maintenance planned for the Olentangy Trail, which is heavily used by the community.

Mr. Bucher asked about the forecasted property valuation increases and whether the 10% increase is just for the City, or the total for Worthington residents. Mr. Bartter responded that the 5% that the City receives, there is no reduction factor, so the amount you are paying to the City increases.

c. June 2023 Financial Report

Minutes:

Mr. Bartter noted that the Police Pension payments need to be paid explicitly out of the Police Pension Fund, which happens via a transfer from the General Fund, which he did in June.

Mr. Robinson asked about the income tax refunds received and what that is. Mr. Bartter replied that it is the amount in dollars that has been refunded through income tax. If you are a person who worked from home in another city but had taxes withheld in Worthington because prior to COVID you were working in Worthington, you can request a refund for that.

MOTION: Ms. Brewer moved, seconded by Ms. Kowalzyk to accept the June 2023 Financial Report as presented.

The motion carried unanimously by a voice vote

d. Vision Implementation

Minutes:

Ms. Stewart explained that this agenda item is to supply time for Council members if they

have any questions related to the Vision Team work.

Ms. Kowalczyk commented that her group had their first meeting of the Leadership team and they followed the process that our consultant put together, and it has proven to be an easy process. She appreciates the work put into structuring the work.

Ms. Hermann concurred, saying that the Vibrant Downtown group has met and the process has been very smooth and she is excited to continue the group.

Mr. Robinson asked about how the groups are going to work to coordinate public engagement and if there could be more discussion about that to coordinate activities.

Mr. Bucher stated that one theme that came out from their meeting is that the Schools are going to be a stakeholder for several groups to engage, so we may want to do that through one point of connection.

e. Current Initiatives

Minutes:

Mr. Robinson brought up that he wanted to have an update on the status of the deer task force. Ms. Stewart explained that she is in the process of working to identify individuals to serve on that task force and begin work.

Ms. Stewart updated that Flavored Tobacco has been pushed to the third and fourth quarters due to the actions being taken at the Ohio Statehouse. Mr. Lindsey updated that Columbus has not moved forward with their Pay to Stay legislation at this point. He thinks there is great value in being consistent with Columbus and whatever policy they adopt.

Mr. Robinson asked about all of the entities that go into successfully putting on the July 4 celebrations in Worthington. Ms. Stewart explained that a lot of work goes into making July 4 a success, especially this year with all the work going on at Thomas Worthington. Fire and Police, along with Parks and Service are deeply involved in planning along with various community groups and the schools. The event went off very smoothly due to the tremendous work put in beforehand.

Reports of Council Members

6. Reports of Council Members

Minutes:

Mr. Bucher reminded everyone that voting begins tomorrow for the August 8 special election and encouraged everyone to be informed and to go vote.

Ms. Kowalczyk provided a shout-out to the Worthington Spotlight's feature on Age-Friendly Worthington and there will be two public open houses on July 25 to review a proposed draft action plan for how we can make Worthington more age-friendly.

Ms. Michael noted that the Economic Development visioning team will have its first meeting this week.

Ms. Brewer gave an update on the upcoming MPC/ARB meeting. She brought up the request from the Community Relations Commission to provide funding for Undesign the Redline. The council agreed to add it to the next week's agenda.

Other Business

Executive Session

- a. To consider the appointment of a public official.

7. Executive Session

Minutes:

MOTION: Ms. Brewer moved, seconded by Ms. Brewer for the purposes of considering the appointment of a public official.

The motion carried unanimously by a roll call vote.

City Council entered Executive Session at about 8:33 p.m.

Members returned to open session at about 8:40 p.m.

Adjournment

8. Motion to Adjourn

Minutes:

MOTION: Ms. Michael moved, seconded by Mr. Smith to adjourn.

The motion carried unanimously by a voice vote.

President Robinson declared the meeting adjourned at approximately 8:40 p.m.



STAFF MEMORANDUM
City Council Meeting – September 11, 2023

Date: August 30, 2023

To: Robyn Stewart, Acting City Manager

From: David McCorkle, Assistant City Manager & Economic Development Director

Subject: Ordinance to Proceed – DLZ Corporation – PACE Project

EXECUTIVE SUMMARY

This Ordinance determines to proceed with the acquisition, construction, installation, equipping, and improvement of certain public improvements by DLZ Corporation at 6121 Huntley Road, in cooperation with the Columbus Regional Energy Special Improvement District.

RECOMMENDATION

Approve as presented.

BACKGROUND/DESCRIPTION

PACE Financing

Property Assessed Clean Energy (PACE) financing is an innovative funding mechanism for improving buildings through energy efficiency and alternative energy solutions. The tool was created in Ohio in 2009 as a form of energy special improvement districts for energy projects under Ohio Revised Code 1710. Both new construction projects and energy efficiency retrofits are eligible for PACE.

PACE financing can be a beneficial tool to property owners and tenants for many reasons, including reducing operating (utility) costs, creating energy and equipment maintenance savings, minimizing the need for upfront cash, preservation of business cash and capital budgets, extended building/facility life, and general environmental stewardship.

Columbus Regional ESID

In 2015, the Columbus Regional Energy Special Improvement District (“ESID”) was created pursuant to the provisions of Ohio Revised Code Chapters 1702 (not-for-profit corporations) and 1710 (special improvement districts), for the purpose of implementing special energy improvement projects within the City of Columbus. In conjunction with the formation of the CRESID, an energy improvement project was funded and completed at a building located in downtown Columbus.

Special improvement districts, by statute, are permitted to provide for special energy improvement projects, and a district may be enlarged from time to time to include additional property located in a municipality adjacent to the district, so long as at least one special energy improvement project is designated for a parcel in that added territory. The City of Worthington became the second member of the Columbus Regional ESID in 2016 with the Trivium Development project at 350 W. Wilson Bridge Road. The ESID is now comprised of (13) different community members, including Columbus, Worthington, Bexley, Dublin, Gahanna, Grandview Heights, Grove City, Hilliard, Marble Cliff, Perry Township, Sharon Township, Upper Arlington, and Whitehall. Current Worthington representatives to the ESID board are David McCorkle and Peter Bucher, with McCorkle currently serving as the Vice Chair of the board.

DLZ’s Project in Worthington

The Columbus-Franklin County Finance Authority (the Authority) has been involved as the funding source for special energy improvement projects through PACE financing. DLZ Corporation, the owner of 6121 Huntley Road, applied to the Authority for PACE financing for several energy efficient improvements it is installing at the site, including rooftop units, building automation systems, LED lighting, solar PV array, and a hydrogen pumping station. The estimated cost of the improvements is approximately \$1,460,050, to be repaid in 38 semi-annual installments (at the time the property taxes are due and payable) at an interest rate of 5%. The improvements, costs, and estimated useful life are listed below:

The Authorized Improvements are expected to consist of the following energy efficiency elements:

ECMs	Project Cost	More Efficient than Alternative?	Estimated Useful Life (yrs)
Rooftop Units	\$230,523.00	Yes	20
Building Automation Systems	\$90,300.00	Yes	15
LED Lighting	\$300,000.00	Yes	20
Solar PV Array	\$642,400.00	Yes	25
[Hydrogen Pumping Station]	[\$1,575,000.00]		
Totals	\$1,460,050.00		

Additional details about the Worthington project:

- 11% reduction in energy use.
- Adding 46% of energy generated from on-site renewable energy source.
- Total energy cost reduction of 31% or \$40,643 a year.
- Reduction in greenhouse gas emissions (GHG) of 381 metric tons per year. This GHG emissions has a social value of \$19,444 or removes 82.7 cars from the road each year.

- Annual energy and maintenance savings of \$58,320 is the equivalent to 389 hours of consulting work at \$150/hour.
- Project may also receive Ohio Air Quality Development Authority (OAQDA) property tax and sales and use tax exemptions for making improvements that reduce the pollutants controlled by the Clean Air Act. This information is disclosed in the Petition for Special Assessments and Supplemental Plan. The OAQDA board will consider the exemption resolution at their September 8, 2023 meeting.

Required Legislative Actions

Both the Finance Authority and the Columbus Regional ESID have already approved the PACE loan. Before the loan can close, the City of Worthington would need to approve a Resolution of Necessity (Resolution 51-2023; approved on 9/5/23) and two ordinances; this Ordinance to Proceed (Ordinance 17-2023) and the Ordinance to Levy Assessments (Ordinance 18-2023). The Ordinance to Levy Assessments is accompanied by a Memorandum of Understanding between the City and Franklin County Treasurer, as well as an Energy Project Cooperative Agreement between DLZ Corporation and the Finance Authority. This method for implementing the funding is by way of special assessment, as prescribed by the procedures contained in Chapter 727 of the ORC.

ATTACHMENTS

Ordinance 17-2023

ORDINANCE NO. 17-2023

An Ordinance Determining to Proceed with the Acquisition, Construction, Installation, Equipping, and Improvement of Certain Public Improvements in the City of Worthington, Ohio in Cooperation with the Columbus Regional Energy Special Improvement District (6121 Huntley Road Project)

WHEREAS, the City Council (“Council”) of the City of Worthington, Ohio (the “City”) duly adopted Resolution No. 51-2023 on September 5, 2023 (the “Resolution of Necessity”), (i) declaring the necessity of acquiring, constructing, improving, and installing energy efficiency improvements including, without limitation, roofing, building automation system, HVAC and controls, LED lighting, solar photovoltaic system, hydrogen pumping station, and related improvements (the “Project,” as more fully described in the Petition referenced in this Ordinance) located on real property owned by DLZ Corporation, a Delaware corporation (the “Owner”) located at 6121 Huntley Road, Columbus, Ohio 43229 and identified by the County Auditor of Franklin County, Ohio as Parcel Number 100-002248-00 within the City (the “Property”, as more fully described in Exhibit A to the Petition); (ii) providing for the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Owner’s *Petition for Special Assessments for Special Energy Improvement Projects and Affidavit* (the “Petition”), including by levying and collecting special assessments to be assessed upon the Property (the “Special Assessments”) in an amount sufficient to pay the costs of the Project, which is estimated to be \$2,745,959.00, including other related costs of financing the Project, which may include, without limitation, the payment of principal of and interest on nonprofit corporate obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and Columbus Regional Energy Special Improvement District (“District”) administrative fees and expenses; and (iii) determining that the Project will be treated as a special energy improvement project to be undertaken cooperatively by the City and the District; and

WHEREAS, the claims for damages alleged to result from, and objections to, the Project have been waived by the Owner, as the owner of one hundred percent (100%) of the Property, and no claims for damages alleged to result from, or objections to, the Project have been filed within the times prescribed by Ohio Revised Code Sections 727.15 and 727.18.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WORTHINGTON, OHIO, THAT:

SECTION 1. Definitions. Each capitalized term not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Petition or to it in the Resolution of Necessity.

SECTION 2. Determination to Proceed. This Council declares that its intention is to proceed or to cooperate with the District to proceed with the acquisition, construction, and improvement of the Project described in the Petition and the Resolution of Necessity. The Project shall be made in accordance with the provisions of the Resolution of Necessity and with the plans, specifications, profiles, and estimates of cost previously approved and now on file with the Clerk of Council.

SECTION 3. Special Assessments. That the Special Assessments to pay costs of the Project, which are estimated to be \$2,745,959.00, including other related financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and District administrative fees and expenses, shall be assessed against the Property in the manner and in the number of semi-annual installments provided in the Petition and the Resolution of Necessity. Each semi-annual Special Assessment payment represents the payment of a portion of any principal repayment and interest and administrative fees payable with respect to the Project. The Special Assessments shall be assessed against the Property commencing in tax year 2024 for collection in 2025 and shall continue through tax year 2042 for collection in 2043. In addition to the Special Assessments, the County Auditor of Franklin County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount, if imposed, will be added to the Special Assessments by the County Auditor of Franklin County, Ohio.

SECTION 4. Amount of Assessments. The estimated Special Assessments for costs of the Project prepared and filed in the office of the Clerk of Council, in accordance with the Resolution of Necessity, are adopted.

SECTION 5. Certification to County Auditor. In compliance with Ohio Revised Code Section 319.61, the Clerk of Council is directed to deliver a certified copy of this Ordinance to the County Auditor of Franklin County, Ohio within 15 days after the date of its passage.

SECTION 6. Contracts. All contracts for the construction of the Project will be let in accordance with the Petition, the Program Plan, and the Supplemental Plan, and the costs of the Project shall be financed as provided in the Resolution of Necessity.

SECTION 7. Compliance with Open Meetings Requirements. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio Revised Code Section 121.22.

Passed _____

President of Council

Attest:

Clerk of Council

CERTIFICATE

The undersigned Clerk of Council hereby certifies that the foregoing is a true copy of Ordinance No. 17-2023 duly passed by the Council of the City of Worthington, Ohio on September 11, 2023, and that a true copy of such Ordinance was certified to the County Auditor of Franklin County, Ohio within 15 days after its passage.

Clerk of Council

RECEIPT OF COUNTY AUDITOR FOR
LEGISLATION DETERMINING TO
PROCEED WITH ACQUISITION, CONSTRUCTION,
AND IMPROVEMENT OF CERTAIN PUBLIC
IMPROVEMENTS IN THE CITY OF WORTHINGTON, OHIO
IN COOPERATION WITH THE COLUMBUS REGIONAL
ENERGY SPECIAL IMPROVEMENT DISTRICT

I, Michael Stinziano, the duly elected, qualified, and acting Auditor in and for Franklin County, Ohio hereby certify that a certified copy of Ordinance No. 17-2023 duly passed by the Council of the City of Worthington, Ohio on September 11, 2023, determining to proceed with the acquisition, construction, and improvement of certain public improvements in the City of Worthington, Ohio in cooperation with the Columbus Regional Energy Special Improvement District, was filed in this office on _____, 2023.

WITNESS my hand and official seal at Columbus, Ohio on _____, 2023.

[SEAL]

Auditor
Franklin County, Ohio



STAFF MEMORANDUM
City Council Meeting – September 11, 2023

Date: August 30, 2023

To: Robyn Stewart, Acting City Manager

From: David McCorkle, Assistant City Manager & Economic Development Director

Subject: Ordinance to Levy Assessments – DLZ Corporation – PACE Project

EXECUTIVE SUMMARY

This Ordinance levies special assessments for the purpose of acquiring, installing, equipping, and improving certain public improvements by DLZ Corporation at 6121 Huntley Road, in cooperation with the Columbus Regional Energy Special Improvement District.

RECOMMENDATION

Approve as presented.

BACKGROUND/DESCRIPTION

PACE Financing

Property Assessed Clean Energy (PACE) financing is an innovative funding mechanism for improving buildings through energy efficiency and alternative energy solutions. The tool was created in Ohio in 2009 as a form of energy special improvement districts for energy projects under Ohio Revised Code 1710. Both new construction projects and energy efficiency retrofits are eligible for PACE.

PACE financing can be a beneficial tool to property owners and tenants for many reasons, including reducing operating (utility) costs, creating energy and equipment maintenance savings, minimizing the need for upfront cash, preservation of business cash and capital budgets, extended building/facility life, and general environmental stewardship.

Columbus Regional ESID

In 2015, the Columbus Regional Energy Special Improvement District (“ESID”) was created pursuant to the provisions of Ohio Revised Code Chapters 1702 (not-for-profit corporations) and 1710 (special improvement districts), for the purpose of implementing special energy improvement projects within the City of Columbus. In conjunction with the formation of the CRESID, an energy improvement project was funded and completed at a building located in downtown Columbus.

Special improvement districts, by statute, are permitted to provide for special energy improvement projects, and a district may be enlarged from time to time to include additional property located in a municipality adjacent to the district, so long as at least one special energy improvement project is designated for a parcel in that added territory. The City of Worthington became the second member of the Columbus Regional ESID in 2016 with the Trivium Development project at 350 W. Wilson Bridge Road. The ESID is now comprised of (13) different community members, including Columbus, Worthington, Bexley, Dublin, Gahanna, Grandview Heights, Grove City, Hilliard, Marble Cliff, Perry Township, Sharon Township, Upper Arlington, and Whitehall. Current Worthington representatives to the ESID board are David McCorkle and Peter Bucher, with McCorkle currently serving as the Vice Chair of the board.

DLZ’s Project in Worthington

The Columbus-Franklin County Finance Authority (the Authority) has been involved as the funding source for special energy improvement projects through PACE financing. DLZ Corporation, the owner of 6121 Huntley Road, applied to the Authority for PACE financing for several energy efficient improvements it is installing at the site, including rooftop units, building automation systems, LED lighting, solar PV array, and a hydrogen pumping station. The estimated cost of the improvements is approximately \$1,460,050, to be repaid in 38 semi-annual installments (at the time the property taxes are due and payable) at an interest rate of 5%. The improvements, costs, and estimated useful life are listed below:

The Authorized Improvements are expected to consist of the following energy efficiency elements:

ECMs	Project Cost	More Efficient than Alternative?	Estimated Useful Life (yrs)
Rooftop Units	\$230,523.00	Yes	20
Building Automation Systems	\$90,300.00	Yes	15
LED Lighting	\$300,000.00	Yes	20
Solar PV Array	\$642,400.00	Yes	25
[Hydrogen Pumping Station]	[\$1,575,000.00]		
Totals	\$1,460,050.00		

Additional details about the Worthington project:

- 11% reduction in energy use.
- Adding 46% of energy generated from on-site renewable energy source.
- Total energy cost reduction of 31% or \$40,643 a year.
- Reduction in greenhouse gas emissions (GHG) of 381 metric tons per year. This GHG emissions has a social value of \$19,444 or removes 82.7 cars from the road each year.

- Annual energy and maintenance savings of \$58,320 is the equivalent to 389 hours of consulting work at \$150/hour.
- Project may also receive Ohio Air Quality Development Authority (OAQDA) property tax and sales and use tax exemptions for making improvements that reduce the pollutants controlled by the Clean Air Act. This information is disclosed in the Petition for Special Assessments and Supplemental Plan. The OAQDA board will consider the exemption resolution at their September 8, 2023 meeting.

Required Legislative Actions

Both the Finance Authority and the Columbus Regional ESID have already approved the PACE loan. Before the loan can close, the City of Worthington would need to approve a Resolution of Necessity (Resolution 51-2023; approved on 9/5/23) and two ordinances; the Ordinance to Proceed (Ordinance 17-2023) and this Ordinance to Levy Assessments (Ordinance 18-2023). This Ordinance to Levy Assessments is accompanied by a Memorandum of Understanding (MOU) between the City and Franklin County Treasurer, as well as an Energy Project Cooperative Agreement (EPCA) between DLZ Corporation and the Finance Authority. This method for implementing the funding is by way of special assessment, as prescribed by the procedures contained in Chapter 727 of the ORC.

ATTACHMENTS

Ordinance No. 18-2023

MOU between City and County Treasurer

EPCA between DLZ and Finance Authority

ORDINANCE NO. 18-2023

An Ordinance Levying Special Assessments for the Purpose of Acquiring, Installing, Equipping, and Improving Certain Public Improvements in the City of Worthington, Ohio in Cooperation with the Columbus Regional Energy Special Improvement District and Approving Project Documents (6121 Huntley Road Project)

WHEREAS, DLZ Corporation (the “Owner”) has submitted a *Petition For Special Assessments for Special Energy Improvement Projects and Affidavit* (the “Petition”) in order to provide for the completion of a special energy improvement project on certain real property owned by the Owner within the City of Worthington, Ohio (the “City”) and having tax parcel identification number 100-002248-00 (the “Property”) as identified by the County Auditor of Franklin County, Ohio (the “County Auditor”); and

WHEREAS, this Council (the “Council”) of the City duly adopted Resolution No. 51-2023 on September 5, 2023 (the “Resolution of Necessity”) and declared the necessity of acquiring, constructing, improving and installing energy efficiency improvements on certain real property, including, without limitation, roofing, building automation system, HVAC and controls, LED lighting, solar photovoltaic system, hydrogen pumping station, and related improvements (the “Project”), as described in the Resolution of Necessity and as set forth in the Petition requesting those improvements; and

WHEREAS, this Council duly passed Ordinance No. 17-2023 on September 11, 2023 and determined to proceed with the Project and adopted the estimated Special Assessments (as defined in the Resolution of Necessity) filed with the Clerk of Council pursuant to the Resolution of Necessity; and

WHEREAS, the City intends to enter into (i) an Energy Project Cooperative Agreement (the “Energy Project Cooperative Agreement”) with the Columbus-Franklin County Finance Authority (the “Finance Authority”), the District, and the Owner, to provide for, among other things, (i) the making of the Project Advance (as defined in the Energy Project Cooperative Agreement and referred to herein as the “Project Advance”) to pay costs of the Project, (ii) the disbursement of the Project Advance for the acquisition, installation, equipment, and improvement of the Project, and (iii) the delivery of the Special Assessments to the Finance Authority by the City or by the County Auditor of Franklin County, Ohio (the “County Auditor”) on behalf of the City to pay principal and interest and other costs relating to the Project Advance; and

WHEREAS, to provide for the security for the Project Advance and for the administration of payments on the Project Advance and related matters, the City intends to enter into a Memorandum of Understanding with the County Treasurer of Franklin County, Ohio (the “County Treasurer”), the District, the Owner, and the Finance Authority (the “County Treasurer MOU”).

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WORTHINGTON, OHIO, THAT:

SECTION 1. Definitions. Each capitalized term not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Resolution of Necessity.

SECTION 2. Special Assessments. The list of Special Assessments to be levied and assessed on the Property in an amount sufficient to pay the costs of the Project, which is \$2,745,959.00, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the Project and the interest on such damages; the reasonable costs incurred in connection with the preparation, levy and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; reasonable expenses of legal services; costs of labor and material; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other reasonable obligations issued or incurred to provide a loan or to secure an advance of funds to the Owner or the Purchaser or otherwise to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued or incurred, including any credit enhancement fees, trustee fees, program administration fees, financing servicing fees, and reasonable District administrative fees and expenses, which costs were set forth in the Petition and previously reported to this Council and are now on file in the office of the Clerk of Council, is adopted and confirmed, and that the Special Assessments are levied and assessed on the Property. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, has been determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds issued by the District to facilitate the financing of the costs of the Project.

The Special Assessments are assessed against the Property commencing in tax year 2024 for collection in 2025 and shall continue through tax year 2042 for collection in 2043; provided, however, if the proceedings relating to the Special Assessments are completed at such time that the County Auditor determines that collections shall not commence in 2025, then the collection schedule may be deferred by one year. The semi-annual installments of the Special Assessments shall be collected in each calendar year equal to the semi-annual amounts of Special Assessments as shown in Exhibit A, attached hereto and incorporated into this Ordinance.

All Special Assessments shall be certified by the Director of Finance to the County Auditor pursuant to the Petition and Ohio Revised Code Chapter 727.33 to be placed on the tax list and duplicate and collected with and in the same manner as real property taxes are collected and as set forth in the Petition.

The Special Assessments shall be allocated among the parcels constituting the Property as set forth in the Petition and the List of Special Assessments attached hereto and incorporated into this Ordinance as Exhibit A.

SECTION 3. Amount of Special Assessments. This Council finds and determines that the Special Assessments are in proportion to the special benefits received by the Property as set forth in the Petition and are not in excess of any applicable statutory limitation.

SECTION 4. Waiver of Cash Settlement. The Owner and the Purchaser have each waived its right to pay the Special Assessments in cash, and all Special Assessments and installments of the Special Assessments shall be certified by the Director of Finance to the County Auditor as provided by the Petition and Ohio Revised Code Section 727.33 to be placed by him or her on the tax list and duplicate and collected with and in the same manner as real property taxes are collected and as set forth in the Petition.

SECTION 5. Appropriation of Special Assessments. The Special Assessments will be used by the City to pay the cost of the Project in cooperation with the District in any manner, including assigning the Special Assessments actually received by the City to the District or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

SECTION 6. Special Assessments File. The Finance Director shall keep the Special Assessments on file in the Office of the Finance Director.

SECTION 7. Energy Project Cooperative Agreement. This Council hereby approves the Energy Project Cooperative Agreement, a copy of which is on file with the Clerk of Council. The Acting City Manager is authorized to sign and deliver, in the name and on behalf of the City, the Cooperative Agreement, in substantially the form as is now on file with the Clerk of Council. The Cooperative Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved the Acting City Manager on behalf of the City, all of which shall be conclusively evidenced by the signing of the Energy Project Cooperative Agreement or amendments to the Energy Project Cooperative Agreement.

SECTION 8. County Treasurer MOU. This Council hereby approves the County Treasurer MOU, a copy of which is on file in the office of the Clerk of Council. The Acting City Manager shall sign and deliver, in the name and on behalf of the City, the County Treasurer MOU, in substantially the form as are now on file with the Clerk of Council. The County Treasurer MOU is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Acting City Manager on behalf of the City, all of which shall be conclusively evidenced by the signing of the County Treasurer MOU or amendments to the County Treasurer MOU.

SECTION 9. Other Agreements. The Acting City Manager is hereby authorized to enter into such other agreements that are not inconsistent with the Resolution of Necessity and this Ordinance and that are approved by the Acting City Manager on behalf of the City, all of which shall be conclusively evidenced by the signing of such agreements or any amendments to such agreements.

SECTION 10. Certification to County Auditor. In compliance with Ohio Revised Code Section 319.61, the Clerk of Council is directed to deliver a certified copy of this Ordinance to the County Auditor within 20 days after its passage.

SECTION 11. Compliance with Open Meetings Requirements. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio Revised Code Section 121.22.

Passed _____

President of Council

Attest:

Clerk of Council

EXHIBIT A

**LIST OF SPECIAL ASSESSMENTS AND
SCHEDULE OF SPECIAL ASSESSMENTS**

LIST OF SPECIAL ASSESSMENTS

<u>Name</u>	<u>Assessed Properties Description</u>	<u>Portion of Benefit and Special Assessment</u>	<u>Amount of Special Assessments</u>
DLZ Corporation	100-002248-00	100%	\$2,745,959.00

SCHEDULE OF SPECIAL ASSESSMENTS
FOR FRANKLIN COUNTY PARCEL NO.:

100-002248-00 *

The following schedule of Special Assessment charges shall be certified for collection in thirty-eight (38) semi-annual installments to be collected with first-half and second-half real property taxes in calendar years 2025 through 2043:

Special Assessment Payment Date **	Special Assessment Amount***
January 31, 2025	\$72,252.50
July 31, 2025	72,252.50
January 31, 2026	72,252.50
July 31, 2026	72,252.50
January 31, 2027	72,252.50
July 31, 2027	72,252.50
January 31, 2028	72,252.50
July 31, 2028	72,252.50
January 31, 2029	72,252.50
July 31, 2029	72,252.50
January 31, 2030	72,252.50
July 31, 2030	72,252.50
January 31, 2031	72,252.50
July 31, 2031	72,252.50
January 31, 2032	72,252.50
July 31, 2032	72,252.50
January 31, 2033	72,252.50
July 31, 2033	72,252.50
January 31, 2034	72,252.50
July 31, 2034	72,252.50
January 31, 2035	72,252.50
July 31, 2035	72,252.50
January 31, 2036	72,252.50
July 31, 2036	72,252.50
January 31, 2037	72,252.50
July 31, 2037	72,252.50
January 31, 2038	72,252.50
July 31, 2038	72,252.50
January 31, 2039	72,252.50
July 31, 2039	72,252.50
January 31, 2040	72,252.50

July 31, 2040	72,252.50
January 31, 2041	72,252.50
July 31, 2041	72,252.50
January 31, 2042	72,252.50
July 31, 2042	72,252.50
January 31, 2043	72,252.50
July 31, 2043	72,252.50

* As identified in the records of the County Auditor of Franklin County, Ohio as of August 21, 2023.

** Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified in this Schedule of Special Assessments are subject to adjustment by the County Auditor of Franklin County, Ohio under certain conditions.

*** The County Auditor of Franklin County, Ohio may impose a special assessment collection fee with respect to each semi-annual Special Assessment payment. If imposed, this special assessment collection fee will be added by the County Auditor of Franklin County, Ohio to each semi-annual Special Assessment payment.

CERTIFICATE

The undersigned Clerk of Council hereby certifies that the foregoing is a true copy of Ordinance No. 18-2023 duly passed by the Council of the City of Worthington, Ohio on September 11, 2023, and that a true copy of such Ordinance was certified to the County Auditor of Franklin County, Ohio within 15 days after its passage.

Clerk of Council

RECEIPT OF COUNTY AUDITOR FOR
LEGISLATION LEVYING SPECIAL ASSESSMENTS
FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING,
AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS
IN THE CITY OF WORTHINGTON, OHIO IN COOPERATION WITH
THE COLUMBUS REGIONAL ENERGY
SPECIAL IMPROVEMENT DISTRICT

I, Michael Stinziano, the duly elected, qualified, and acting Auditor in and for Franklin County, Ohio hereby certify that a certified copy of Ordinance No. 18-2023, duly passed by the Council of the City of Worthington, Ohio on September 11, 2023 levying special assessments for the purpose of acquiring, constructing, and improving certain public improvements in the City of Worthington, Ohio in cooperation with the Columbus Regional Energy Special Improvement District, including the List of Special Assessments and Schedule of Special Assessments, which Special Assessment charges shall be certified for collection in 38 semi-annual installments to be collected with first-half and second-half real property taxes in calendar years 2025 through 2043, was filed in this office on _____, 2023.

WITNESS my hand and official seal at Columbus, Ohio on _____, 2023.

[SEAL]

Auditor
Franklin County, Ohio

MEMORANDUM OF UNDERSTANDING BETWEEN
THE COUNTY TREASURER OF FRANKLIN COUNTY, OHIO
("Treasurer"),

And

CITY OF WORTHINGTON, OHIO
("City"),

And

BEXLEY, COLUMBUS, DUBLIN, GAHANNA, GRANDVIEW HEIGHTS, GROVE CITY, HILLIARD, MARBLE CLIFF,
PERRY TOWNSHIP, SHARON TOWNSHIP, UPPER ARLINGTON, WHITEHALL, WORTHINGTON REGIONAL
ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:

COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.
("District"),

And

DLZ CORPORATION
("Owner"),

And

COLUMBUS-FRANKLIN COUNTY FINANCE AUTHORITY
("Finance Authority")

Dated as of [____], 2023

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made effective as of [____], 2023, by and among the County Treasurer of Franklin County, Ohio (the “Treasurer”), the City of Worthington, Ohio (the “City”), the Bexley, Columbus, Dublin, Gahanna, Grandview Heights, Grove City, Hilliard, Marble Cliff, Perry Township, Sharon Township, Upper Arlington, Whitehall, Worthington Regional Energy Special Improvement District, Inc., doing business under the registered trade name Columbus Regional Energy Special Improvement District, Inc. (“District”), DLZ Corporation (the “Owner”), and the Columbus-Franklin County Finance Authority (together with its permitted successors and assigns, the “Finance Authority”) (the Treasurer, the City, the District, the Owner, and the Finance Authority are collectively referred to herein as the “Parties”).

BACKGROUND:

WHEREAS, the District was created under Ohio Revised Code Chapters 1702 and 1710 and established pursuant to Resolution No. 0261X-2015 of the City Council of the City of Columbus, Ohio approved on November 23, 2015; and

WHEREAS, this document is to serve as a Memorandum of Understanding between the Parties. This Memorandum of Understanding is not a contract and shall not be viewed to obligate the Treasurer but rather provides a framework for understanding between the Parties; and

WHEREAS, the Owner has determined that it is in its best interests to cause the acquisition, installation, equipping, and improvement of special energy improvement projects consisting of efficiency improvements, including, without limitation, roofing, building automation system, HVAC and controls, LED lighting, solar system, hydrogen pumping station, and related improvements (collectively, the “Project”) on the real property located within Franklin County, Ohio (the “County”) and the City, and as more fully described in **Exhibit A** to this Memorandum of Understanding (the “Assessed Lands”); and

WHEREAS, the costs of the Project are being funded in part through an advance in the aggregate amount of \$1,744,407.65 (consisting of the initial principal amount of \$1,610,906.43 and accrued interest to be added to the initial principal amount in the aggregate amount of \$133,501.22 (the “Project Advance”) to the Owner pursuant to an Energy Project Cooperative Agreement dated as of [____], 2023 (the “Energy Project Cooperative Agreement”) between the District, the City, the Finance Authority, and the Owner; and

WHEREAS, to secure the repayment of the principal of, and the payment of any premium, fees, and unpaid interest on, the Project Advance used to finance the Project (the “Project Costs”), (i) the Owner signed and delivered to the Clerk of the Council of the City (the “Council”) a Petition for Special Assessments for Special Energy Improvement Projects and Affidavit (the “Petition”) for the acquisition, installation, equipping, and improvement of the Project and evidencing the Owner’s agreement to the levy and collection of special assessments by the City (as identified in **Exhibit B** to this Memorandum of Understanding, the “Special Assessments”) on the Assessed

Lands, which are located within the District, in amounts sufficient to pay the Project Costs, and (ii) the Parties acknowledge that the City (a) has taken all the necessary actions required by Ohio Revised Code Chapter 727, including, without limitation, the passage of the assessing resolution or ordinance pursuant to the requirements of Ohio Revised Code Section 727.25, for the levying of the Special Assessments and has caused or will cause the Special Assessments to be certified to the County Auditor of Franklin County, Ohio (the “County Auditor”) for collection by the Treasurer in semi-annual installments, and (b) has agreed to transfer to the Finance Authority the payments of Special Assessments received to pay the Project Costs; and

WHEREAS, pursuant to the Petition, the Special Assessments will be levied against the Assessed Lands as described in the Petition and pursuant to this Memorandum of Understanding the Owner is willing to agree to make Special Assessment payments in accordance with the Petition, and the Owner has agreed that the requests and agreements made in the Petition are irrevocable and that the Parties have acted and will act in reliance on the agreements contained in the Petition; and

WHEREAS, Ohio Revised Code Chapters 323 and 5721 set forth certain parameters and timing requirements for the foreclosure of property on which taxes and assessments, including the Special Assessments, are due and owing and remain unpaid, and the Treasurer has the statutory responsibility to foreclose the lien of the Special Assessments upon certification of delinquency; and

WHEREAS, upon the occurrence of an Event of Default pursuant to the Energy Project Cooperative Agreement, it may be necessary for the City, the District, or the Finance Authority to appear in any foreclosure of the lien of the Special Assessments with respect to the Assessed Lands to protect their interests; and

WHEREAS, if any assessments, including, without limitation, the Special Assessments, payments in lieu of taxes, real property taxes, or other governmental charges levied on the Assessed Lands are not paid when due and thereafter remain delinquent, the Treasurer, pursuant to Ohio Revised Code Sections 5721.30 through 5721.41 (the “Delinquent Tax Lien Sale Act”), and specifically Ohio Revised Code Section 5721.33, may, in his or her discretion, but is not required to, negotiate with one or more persons the sale of any number of tax certificates (“Tax Certificates”) which evidence the liens (the “Tax Liens”) of the State of Ohio (the “State”) and its applicable taxing districts for such delinquent assessments, including Special Assessments, real property taxes, payments in lieu of taxes, charges, or penalties and interest on such Assessed Lands; and

WHEREAS, if the Treasurer were to accept collection of delinquent Special Assessments at a discount, if the Treasurer were to sell Tax Certificates with respect to delinquent Special Assessments at a discount, or if the Treasurer were to transfer the Assessed Lands to the county land reutilization corporation as provided in Ohio Revised Code Chapter 5722 (the “Land Bank Act”), the amounts recovered with respect to any delinquent Special Assessments may be insufficient to pay the Project Costs; and

WHEREAS, the Treasurer does not desire to take any action with respect to the collection of the Special Assessments that might adversely affect the repayment of the Project Advance without the consent of the District or adversely affect the payment of the Project Costs without the consent of the District; and

NOW, THEREFORE, the Parties agree that the Treasurer is not legally bound by this Memorandum of Understanding and will use best efforts to agree with the Parties as follows:

Section 1. Special Assessments.

1.1 The Owner, prior to the execution and delivery of this Memorandum of Understanding, signed and delivered to the Clerk of the Council the Petition for the acquisition, installation, equipping, and improvement of the Project and evidencing the agreement of the Owner to the levy of the Special Assessments as security for the Project Advance. The Owner agrees that the delivery of the Petition and the requests and agreements made therein are irrevocable and that the Parties hereto have acted and will act in reliance on the agreements contained in that Petition.

1.2 The City shall cause the Special Assessments, as set forth in the Assessment Schedule attached to the Petition, to be certified to the County Auditor for collection pursuant to the requirements of Section 727.33 of the Ohio Revised Code.

1.3 The Parties each acknowledge that the City has assigned all of its right, title, and interest in and to the Special Assessments to the Finance Authority, and that the District has assigned all of its right, title, and interest it may have in and to the Special Assessments to the Finance Authority. The Parties each acknowledge that the Special Assessments are available to secure payments relating to the Project Advance, including the Project Costs and other amounts as provided under the Energy Project Cooperative Agreement.

Section 2. Foreclosure Process; Discretionary Actions of Treasurer.

2.1 The Treasurer agrees that so long as the Project Advance is outstanding and the Project Costs and other amounts under the Energy Project Cooperative Agreement are payable, at least in part, by the revenues derived from the Special Assessments, upon the certification by the Treasurer of the delinquency of the Assessed Lands, the Treasurer will file and diligently prosecute a foreclosure action to collect all Special Assessments then due and owing on the Assessed Lands (as applicable), following all procedures for lien foreclosures established in Ohio Revised Code Chapters 323 and 5721, and related statutes.

2.2 The Treasurer agrees that so long as the Project Advance is outstanding and the Project Costs and other amounts under the Energy Project Cooperative Agreement are payable, at least in part, by the revenues derived from the Special Assessments, the Treasurer will use best efforts to not sell or negotiate the sale of one or more Tax Certificates related to the Assessed Lands for an amount less than 100% of the amount levied and certified for collection.

2.3 The Treasurer agrees to use best efforts not to utilize the authority contained in Ohio Revised Code Chapter 5722 to transfer any of the Assessed Lands (as applicable) to the county land reutilization corporation, to sell or convey any of the Assessed Lands (as applicable) to any political subdivision under the authority contained in Ohio Revised Code Chapter 5722, or to clear the liens and encumbrances applicable to the Assessed Lands (as applicable) under the authority contained in Ohio Revised Code Chapter 5722. The District and the Finance Authority acknowledge and agree that certain other parties have rights and authority to take certain actions under Ohio Revised Code Chapter 5722 which are outside of the control of the Treasurer, and the taking of any such action by another entity as authorized under Ohio Revised Code Chapter 5722 shall not be considered or construed as a violation of this Memorandum of Understanding by the Treasurer. The initiation by the Treasurer of any civil action to collect unpaid real estate taxes, assessments, payments in lieu of taxes, or other governmental charges shall not be inconsistent with the terms of this Memorandum of Understanding.

2.4 If at any time while the Project Advance is outstanding and the Project Advance and other amounts under the Energy Project Cooperative Agreement are secured, at least in part, by the revenues derived from the Special Assessments the Owner pays any installment of the Special Assessments and other general real estate taxes, payments in lieu of taxes, and assessments, including the Special Assessments, penalties, and interest after the date on which such installment is due but before the expiration of the time period specified in Ohio Revised Code Section 323.121(C), the Treasurer promptly, but in no case later than 14 days after acquiring actual knowledge of the same, will use its best efforts to notify the City, the Authority, and the District of the late payment. Promptly, but in no case later than 10 days, after receipt of notice from the Treasurer the Authority shall instruct the City to certify to the County Auditor a reduction in the Special Assessments such that the installment paid late shall be reduced to \$0.00. Promptly, but in no case later than 10 days after receipt of instruction from the Authority the City shall certify the reduction to the County Auditor and notify the Authority and the Owner of the certification. Promptly upon the City's certification, but in no case later than 5 days after receipt of notice of the certification, the Owner shall apply to the Treasurer for the return of a surplus real property tax payment in the amount of the installment of the Special Assessments paid late. Notwithstanding any contrary instruction made by the Owner to the Treasurer, the Treasurer will use its best efforts to pay the amount of the Special Assessment installment to be refunded pursuant to the above directly to the Authority.

Section 3. Indemnification by Owner

3.1 The Owner hereby releases the District, the City, the Treasurer, the Finance Authority, and their respective officers, directors, Council Members, officials, and employees (the "Indemnified Parties"), from, agrees that the Indemnified Parties shall not be liable for, and indemnifies the Indemnified Parties against, all liabilities, claims, costs, and expenses, including out-of-pocket and incidental expenses and legal fees, imposed upon, incurred, or asserted against Indemnified Parties, on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, installation, equipping, improvement, maintenance, operation, and use of the Project; (ii) any

breach or default on the part of the Owner in the performance of any covenant, obligation, or agreement of the Owner under the Energy Project Cooperative Agreement, or arising from any act or failure to act by the Owner, or any of the Owner's agents, contractors, servants, employees, or licensees; (iii) the Owner's failure to comply with any requirement of this Memorandum of Understanding; (iv) the efforts of the City and the Treasurer to collect Special Assessments; (v) any reasonable legal costs or out-of-pocket costs incurred by the District or the City specifically related to additional approvals or actions that may be required by the District or the City arising after the date of the Energy Project Cooperative Agreement (and in the case of such legal costs or out-of-pocket costs, agrees to pay such costs directly to the District and to the City, as the case may be); and (vi) any claim, action or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), (iv), or (v) above; provided, however, that the Owner shall not indemnify the Indemnified Parties, other than the Treasurer, as provided above to the extent that any liability, claim, cost, or expense arises out of or results from the gross negligence, willful misconduct, or breach of this Agreement or the Energy Project Cooperative Agreement of the Indemnified Parties.

3.2 The Owner agrees to indemnify, to pay, and to hold each of the Indemnified Parties harmless from and against all liabilities, and all reasonable costs and expenses, including out-of-pocket expenses and attorneys' fees, arising out of any federal, state, or local environmental laws, regulations, resolutions or ordinances, incurred by any of the Indemnified Parties as a result of the existence on or release from the Assessed Lands of Hazardous Materials, which in any way result from any act of omission or commission of the Owner or any of its agents, employees, independent contractors, invitees, licensees, successors, assignees, or tenants. To the extent that this Memorandum of Understanding confers upon or gives or grants to the City any rights, remedies, or claims by reason of this Memorandum of Understanding, the City is recognized as being a third party beneficiary hereunder and may enforce any such right, remedy, or claim conferred, given, or granted hereunder.

Section 4. Additional Terms.

4.1 If any provision of this Memorandum of Understanding shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

4.2 This Memorandum of Understanding shall inure to the benefit of each of the Parties, and each of their successors and assigns, all subject to the provisions of this Memorandum of Understanding. This Memorandum of Understanding may be amended only by a written instrument of the Parties, and any attempt to amend or modify this Memorandum of Understanding without a written instrument signed by all of the Parties to this Memorandum of Understanding shall be null and void. Notices given hereunder shall be in writing and shall be effective when actually received if delivered by hand or overnight courier, or three days after being sent by registered or certified mail, postage prepaid, the certification receipt therefore being deemed the date of such notice, and addressed to the Parties as follows:

If to Treasurer: County Treasurer
Franklin County, Ohio

373 S. High Street, Fl. 17
Columbus, Ohio 43215

If to the City: City of Worthington, Ohio
6550 N. High Street
Worthington, Ohio 43085
Attention: City Manager

If to the District: Columbus Regional Energy Special
Improvement District, Inc.
c/o Columbus-Franklin County
Finance Authority
300 Spruce Street, Suite 220
Columbus, Ohio 43201
Attention: PACE Program Administrator
Phone: (614) 429-0177
Email: info@columbusfinance.org

With a copy to: J. Caleb Bell
Bricker Graydon LLP
100 South Third Street
Columbus, Ohio 43215
Phone: (614) 227-2300
Email: pace@brickergraydon.com

If to the Owner: DLZ Corporation
6121 Huntley Road
Columbus, OH 43229
Attention: Ram Rajadhyaksha
Phone: (614) 888-0040
Email: ramr@dlz.com

With a copy to: DLZ Corporation
6121 Huntley Road
Columbus, Ohio 43229
Attention: Barry Lubow
Email: blubow@dlz.com

If to the Finance
Authority: Columbus-Franklin County
Finance Authority
300 Spruce Street, Suite 220
Columbus, Ohio 43201
Attention: PACE Program Administrator

Phone: (614) 429-0177
Email: info@columbusfinance.org

4.3 The Finance Authority shall have the unrestricted right at any time or from time to time, and without the Treasurer, the City, the District, or the Owner's consent, to assign all or any portion of its rights and obligations under this Memorandum of Understanding, and may sell or assign any and all liens received directly or indirectly from the City, to any person (each, an "Finance Authority Assignee"). The Owner agrees that it shall execute, or cause to be executed, such reasonable documents, including without limitation, amendments to this Memorandum of Understanding and to any other documents, instruments and agreements executed in connection with this Memorandum of Understanding as the Finance Authority shall deem necessary to effect the foregoing; provided such documents do not materially and adversely affect the Owner's rights or obligations. Any Finance Authority Assignee shall be a party to this Memorandum of Understanding and shall have all of the rights and obligations of the Finance Authority under this Memorandum of Understanding (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Memorandum of Understanding) to the extent that such rights and obligations have been assigned by the Finance Authority pursuant to the assignment documentation between the Finance Authority and such Assignee, and the Finance Authority shall be released from its obligations under this Memorandum of Understanding and under any and all other guaranties, documents, instruments and agreements executed in connection with this Memorandum of Understanding to a corresponding extent. This section is not intended to create contractual obligations under the Memorandum of Understanding.

4.4 This Memorandum of Understanding shall be construed in accordance with the laws of the State of Ohio.

4.5 This Memorandum of Understanding may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

4.6 Notwithstanding anything in this Memorandum of Understanding to the contrary, the Treasurer's obligations under this Memorandum of Understanding are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The Treasurer's obligations shall be limited to the moneys levied, collected, and received in respect of the Special Assessments and any County-imposed collection fees, charges, or penalties. The Treasurer's engagement under this Memorandum of Understanding does not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the County. The defenses and immunities afforded to the Treasurer through Ohio Revised Code Chapter 2744 shall apply to this Memorandum of Understanding.

4.7 Notwithstanding anything in this Memorandum of Understanding to the contrary, the District's obligations under this Memorandum of Understanding are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The District's obligation under this Memorandum of Understanding shall be limited to any moneys received from the

County in respect of the Special Assessments and any County-imposed collection fees, charges, or penalties. The District's obligations under this Memorandum of Understanding do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the District.

(Signature Pages Immediately Follow)

IN WITNESS WHEREOF, each party to this Memorandum of Understanding has caused this Memorandum of Understanding to be executed in its respective name and capacity by its respective duly authorized officers, all as of the day and the year first written above.

“TREASURER”
COUNTY TREASURER OF FRANKLIN
COUNTY, OHIO

Treasurer
County of Franklin, Ohio

Date: _____

Approval as to form:

Franklin County Prosecutor’s Office

“CITY”
CITY OF WORTHINGTON, OHIO

Name: _____

Title: _____

“DISTRICT”

BEXLEY, COLUMBUS, DUBLIN, GAHANNA, GRANDVIEW HEIGHTS, GROVE CITY, HILLIARD, MARBLE CLIFF, PERRY TOWNSHIP, SHARON TOWNSHIP, UPPER ARLINGTON, WHITEHALL, WORTHINGTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:

COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

By: _____

Name: _____

Title: _____

“OWNER”
DLZ CORPORATION

By: _____

Name: _____

Title: _____

“FINANCE AUTHORITY”
COLUMBUS-FRANKLIN COUNTY FINANCE
AUTHORITY

By: _____

Name: _____

Title: _____

EXHIBIT A

DESCRIPTION OF ASSESSED LANDS

The Assessed Lands subject to this Memorandum of Understanding are located at the commonly used mailing address 6121 Huntley Road, Columbus, Ohio 43229, with Franklin County Auditor Parcel ID No. 100-002248-00 and the following legal description:

Being in Section No. 3, Lot No. 6 and 7, Township 2 North, Range 18 West, United States Military Lands and being all of the lands conveyed to RENNOB, Inc. by deeds of record in Deed Book 3133, page 90 (1.0 acre tract), Deed Book 3133, page 93, (1.92 acre tract) and Deed Book 3463, page 561, (3.213 acre tract), all references being to the Recorder's Office, Franklin County, Ohio, and being more particularly described as follows:

Beginning at an iron pin (1" solid re-bar) found in the easterly right-of-way line of the Consolidated Rail Corporation property (formerly C.C. & St. Louis Railroad), also in the northwest corner of a 1.49 acre tract of land now or formerly owned by Mahlon Maxton Chevrolet, Inc. by deed of record in Deed Book 2838, page 593; said iron pin located North 3° 11' 09" West a distance of 480.81 feet from the centerline of State Route 161, Station 564+10.99 (O.D.O.T. R/W Plans FRA-161-10.76), this point being 50 feet easterly of the centerline of the main track of said Consolidated Rail Corporation;

Thence, North 3° 11' 09" West with the easterly right-of-way line of said Consolidated Rail Corporation a distance of 272.55 feet to an iron pipe (3/4" I.D.) found in the southwest corner of a 13.489 acre tract of land now or formerly owned by Donald R. Kenney, Trustee by deed of record in Official Record No. 13266, H-03;

Thence, South 87° 09' 27" East along the southerly line of said 13.489 acre Kenney tract a distance of 690.08 feet to an iron pipe (3/4" I.D.) found;

Thence, South 87° 12' 57" East continuing with the southerly line of said Kenney tract a distance of 212.90 feet to iron pipe (3/4" I.D.) found in northwest corner of a 0.04 acre tract of land conveyed to the City of Worthington by Case No. 86CV-07-4153 in the Court of Common Pleas of Franklin County, Ohio, of record in Official Record No. 08743, B-05;

Thence, South 2° 37' 40" West along the westerly line of said 0.04 acre City of Worthington tract a distance of 175.03 feet to an iron pipe (3/4" I.D.) set;

Thence, South 87° 22' 20" East with the southerly line of said 0.04 acre City of Worthington tract a distance of 10.00 feet to an iron pipe (3/4" I.D.) set in the westerly right-of-way line of Huntley Road (old) (60" R/W);

Thence, South 2° 37' 40" West with the westerly right-of-way line of said Huntley Road (old) a distance of 201.03 feet to an iron pipe (3/4" I.D.) set in the northeast corner of a 0.662 acre tract of land now or formerly owned by Dodson-Lindblom Associates by deed of record in Official Record No. 08808, I-12;

Thence, North 87° 19' 01" West with the north line of said 0.662 acre tract and with the northerly line of a 0.623 acre tract of land now or formerly owned by Rick's Car Wash Properties

Co. by deed of record in Official Record No. 07683, 1-10 a distance of 222.85 feet to an iron pipe (3/4" I.D.) found in the northwest corner of said 0.623 acre Rick's Car Wash tract, said pipe also being in the easterly line of a 4.75 acre tract of land now or formerly owned by Mahlon Maxton Chevrolet, Inc. by deed of record in Deed Book 3454, page 915;

Thence, North 2° 41' 45" East with the easterly line of said 4.75 acre Mahlon tract and also the easterly line of a 0.52 acre tract of land now or formerly owned by Mahlon Maxton Chevrolet, Inc. by deed of record in Deed Book 2838, page 588, a distance of 104.64 feet to an iron pin (1" solid) found in the northeast corner of said 0.52 acre Maxton tract;

Thence, 87° 05' 36" West with the northerly line of said 0.52 acre Mahlon tract and also the said 1.49 acre Mahlon Maxton Chevrolet tract a distance of 662.65 feet to the point of beginning.

It is understood that the tract of land described above contains 6.0984 acres, more or less, being subject to all legal highways and easements of record.

Bearings are based upon the easterly right-of-way line of Consolidated Rail Corporation, being North 3° 11' 09" West, of record in Deed Book 3483, page 562, Recorder's Office, Franklin County, Ohio.

EXHIBIT B

SCHEDULE OF SPECIAL ASSESSMENTS

Special Assessment Payment Date ¹	Special Assessment Installment Amount ²
First Half 2025	\$72,252.50
Second Half 2025	72,252.50
First Half 2026	72,252.50
Second Half 2026	72,252.50
First Half 2027	72,252.50
Second Half 2027	72,252.50
First Half 2028	72,252.50
Second Half 2028	72,252.50
First Half 2029	72,252.50
Second Half 2029	72,252.50
First Half 2030	72,252.50
Second Half 2030	72,252.50
First Half 2031	72,252.50
Second Half 2031	72,252.50
First Half 2032	72,252.50
Second Half 2032	72,252.50
First Half 2033	72,252.50
Second Half 2033	72,252.50
First Half 2034	72,252.50
Second Half 2034	72,252.50
First Half 2035	72,252.50
Second Half 2035	72,252.50
First Half 2036	72,252.50
Second Half 2036	72,252.50
First Half 2037	72,252.50
Second Half 2037	72,252.50
First Half 2038	72,252.50
Second Half 2038	72,252.50
First Half 2039	72,252.50
Second Half 2039	72,252.50
First Half 2040	72,252.50
Second Half 2040	72,252.50
First Half 2041	72,252.50
Second Half 2041	72,252.50
First Half 2042	72,252.50
Second Half 2042	72,252.50
First Half 2043	72,252.50
Second Half 2043	72,252.50

* Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates for first-half and second-half real property taxes identified in this Exhibit B are determined by statute and a variety of circumstances and are subject to adjustment by the Franklin County Auditor under certain conditions.

** Pursuant to Ohio Revised Code Section 727.36, the Franklin County Auditor may charge and collect a fee in addition to the amounts listed in this Exhibit B.

ENERGY PROJECT COOPERATIVE AGREEMENT

By and among

BEXLEY, COLUMBUS, DUBLIN, GAHANNA, GRANDVIEW HEIGHTS, GROVE CITY, HILLIARD, MARBLE CLIFF,
PERRY TOWNSHIP, SHARON TOWNSHIP, UPPER ARLINGTON, WHITEHALL, WORTHINGTON
REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:
COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.;

DLZ CORPORATION;

COLUMBUS-FRANKLIN COUNTY FINANCE AUTHORITY; and

THE CITY OF WORTHINGTON, OHIO

Dated as of [____], 2023

BRICKER GRAYDON LLP

ENERGY PROJECT COOPERATIVE AGREEMENT

THIS ENERGY PROJECT COOPERATIVE AGREEMENT (the **Agreement**) is made and entered into as of [____], 2023 (the **Effective Date**), by and among the BEXLEY, COLUMBUS, DUBLIN, GAHANNA, GRANDVIEW HEIGHTS, GROVE CITY, HILLIARD, MARBLE CLIFF, PERRY TOWNSHIP, SHARON TOWNSHIP, UPPER ARLINGTON, WHITEHALL, WORTHINGTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., doing business under the registered trade name COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., a nonprofit corporation and special improvement district duly organized and validly existing under the laws of the State of Ohio (the **State**) (the **ESID**), DLZ CORPORATION, a corporation validly existing under the laws of the State of Delaware (the **Owner**), the COLUMBUS-FRANKLIN COUNTY FINANCE AUTHORITY, a port authority and body corporate and politic duly organized and validly existing under the laws of the State (the **Finance Authority**), and the CITY OF WORTHINGTON, OHIO, a municipal corporation duly organized and validly existing under the constitution and laws of the State and its Charter (the **City**) (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. The ESID was created under Ohio Revised Code Chapters 1702 and 1710 and established pursuant to Resolution No. 0261X-2015 of the Council of the City of Columbus, Ohio approved on November 23, 2015. Pursuant to the same action, the Columbus Regional Energy Special Improvement District Program Plan (as amended and supplemented from time to time, the **Program Plan**) was adopted as a plan for public improvements and public services under Ohio Revised Code Section 1710.02(F).

B. The ESID is an energy special improvement district and nonprofit corporation duly organized and validly existing under the laws of the State 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. On _____, 2023, by its Resolution No. [____], the Council of the City (the **City Council**) approved the Petition for Special Assessments for Special Improvement Projects and Affidavit (the **Petition**) submitted by the Owner to the City, together with the “Supplement to Plan for 6121 Huntley Road, Worthington, Ohio Project” (the **Supplemental Plan**), as a supplement to the Program Plan.

D. Pursuant to the Program 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.

E. 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, the Petition requested that the City Council levy Special Assessments against the Owner’s property as more fully described in the Supplemental Plan.

F. A portion of the costs of the special energy improvement projects will be financed through bonds issued by the Ohio Air Quality Development Authority (the **OAQDA**), which bonds

(the **OAQDA Bonds**) will be purchased by the Finance Authority subject to the terms and conditions of the Bond Purchase Agreement between the Finance Authority, the Owner, and the OAQDA dated as of [], 2023 (the **Bond Purchase Agreement**). A portion of the Project Advance equal to \$[] under this Agreement shall constitute the purchase of the equal principal amount of the OAQDA Bonds, and payments of moneys received as Special Assessments from the City to the Finance Authority as identified in **Exhibit B**, paid in accordance with this Agreement and with the Special Assessment Agreement, shall constitute payment of the principal of, and interest and any premium on (the **Bond Service Charges**), the OAQDA Bonds

G. The ESID, the Owner, the City, and the Finance Authority (collectively the **Parties**, and each, a **Party**) each have determined that the most efficient and effective way to implement the financing, acquisition, installation, equipping, and improvement of energy special improvement projects and to further the public purposes set forth above is through this Agreement, pursuant to the Special Assessment Act and on the terms set forth in this Agreement, with (i) the Finance Authority providing the Project Advance to finance the costs of the special energy improvement projects described in the Supplemental Plan, (ii) the ESID and the Owner cooperating to acquire, install, equip, and improve special energy improvement projects, (iii) the Owner 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, (iv)) the City agreeing to assign and transfer all Special Assessment and Delinquency Amounts payments actually received by the City to the Finance Authority to repay the Project Advance, a portion of which Special Assessment payments, as shown on **Exhibit B**, shall constitute Bond Service Payments on the OAQDA Bonds; and (v) the ESID agreeing to assign, transfer, and set over to the Finance Authority any of its right, title, or interest in and to the Special Assessments which it may have by operation of law, this Agreement, or otherwise; provided that a portion of the Special Assessments may be retained by, or be payable to, the City, the County Auditor, or the ESID, all pursuant to and in accordance with this Agreement.

H. The Parties 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 Parties agree as follows; provided, 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 and Delinquency Amounts actually received by the ESID, if any; and provided, further, 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 and Delinquency Amounts actually received by the City, if any:

ARTICLE I: DEFINITIONS

Section 1.1. 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 shall have the meanings set forth in **Exhibit A** to this Agreement unless the context or use clearly indicates another meaning or intent. 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.

Section 1.2. Interpretation. Any reference in this Agreement to the ESID, the ESID Board, the Owner, the City, the City Council, the Finance Authority, or the Board of Directors of the Finance Authority, 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 Special Assessment 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 Parties under this Agreement.

Section 1.3. 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

Section 2.1. Agreement Among the City, the ESID and the Finance Authority. The Owner and the ESID have requested the assistance of the Finance Authority and the City in the financing of special energy improvement projects within 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 City and the ESID have requested the assistance and cooperation of the Finance Authority in the collection and payment of Special Assessments in accordance with this Agreement. The Parties intend this Agreement to be, and it shall be, an agreement among the Parties to cooperate in the financing, acquisition, installation, equipping, and improvement of “special energy improvement projects,” pursuant to Ohio Revised Code Chapter 1710, and as that term is defined in Ohio Revised Code Section 1710.01(I). The Parties intend this Agreement's provisions to be, and they shall be construed as, agreements to take effective cooperative action and to safeguard the Parties' interests.

Upon the considerations stated above and upon and subject to the terms and conditions of this Agreement, the Finance Authority, on behalf of the Parties, shall make the Project Advance available to the Owner to pay the costs of the Project. The City and ESID shall assign, transfer, set over, and pay the Special Assessments and Delinquency Amounts actually received by the City or the ESID, respectively, to the Finance Authority, to pay the costs of the Project at the times and in

the manner provided in this Agreement, and the portion of the Special Assessment payments shown on **Exhibit B** shall be transferred to the Finance Authority and constitute Bond Service Payments on the OAQDA Bonds; provided, however, that the City, the ESID, and the Finance Authority intend that the City shall receive all Special Assessments and Delinquency Amounts from the County Treasurer and shall transfer, set over, and pay all Special Assessments and Delinquency Amounts received from the County Treasurer directly to the Finance Authority. The City, the ESID and the Finance Authority further intend and agree that the Finance Authority shall pay to the ESID, out of the Special Assessments received by the Finance Authority, a semi-annual ESID Fee for the ESID's administrative expenses; provided, however, that if the amount of Special Assessments received by the Finance Authority in any year is insufficient to pay the principal of, and interest on the Project Advance due in that year and the semi-annual ESID Fee, the Special Assessments received shall first be applied to the payment of interest on the Project Advance, then to the repayment of the principal of the Project Advance, and then to the payment of the semi-annual ESID Fee.

Notwithstanding anything in this Agreement to the contrary, any obligations of the City under this Agreement, including the obligation to transfer the Special Assessments and Delinquency Amounts received by the City to the Finance Authority, 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 Owner, the ESID, and the Finance Authority do 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) The Special Assessment Proceedings. The City has taken all necessary actions required by the Special Assessment Act to levy and collect the Special Assessments on the Property.

Pursuant to Ohio Revised Code Section 727.33, the City has certified the Special Assessments to the County Auditor for collection, and the County Auditor shall 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 Parties intend that the County Auditor and the County Treasurer shall have the duty to collect the Special Assessments through enforcement proceedings in accordance with applicable law.

- (b) Collection of Delinquent Special Assessments. The ESID and the Finance Authority are hereby authorized to take any and all actions as assignees of and, to the extent required by law, 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 Special 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 Auditor, and the County

Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings in accordance with the terms of the Memorandum of Understanding by and among the County Treasurer, the City, the ESID, the Finance Authority, and the Owner and dated as of the date of this Agreement (the **Memorandum of Understanding**). The proceeds of the enforcement of any such lien shall be deposited and used in accordance with this Agreement.

- (c) Prepayment of Special Assessments. The Parties agree that the Special Assessments assessed against the Property and payable to the City pursuant to the Special Assessment Act may be prepaid to the Finance Authority by the Owner in accordance with Section 4.7 of this Agreement. Any such prepayments shall, to the extent applicable, constitute Bond Service Payments (including, as applicable, prepayment of Bond Service Payments) on the OAQDA Bonds in accordance with **Exhibit B**. Except as set forth in this Section 2.2(c) and Section 4.7 of this Agreement, the Owner shall not prepay any Special Assessments. Notwithstanding the foregoing, if the Owner attempts to cause a prepayment of the Special Assessments by paying to the County Treasurer any amount as a full or partial prepayment of Special Assessments, and if the City shall have knowledge of the same, the City immediately shall notify the Finance Authority, and, unless provided the express written consent of the Finance Authority, the City shall not cause any reduction in the amount of Special Assessments. 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 Finance Authority.
- (d) Reduction of Special Assessments. The Parties agree that the Special Assessments may be subject to reduction, but only upon the express written consent or instruction of the Finance Authority. If the Owner causes the Special Assessments to be prepaid in accordance with Sections 2.2(c) and 4.7 of this Agreement, upon the City's receipt of the Finance Authority's express written consent or instruction, the City shall certify to the County Auditor, prior to the last date in the then-current tax year on which municipal corporations may certify special assessments to the County Auditor, a reduction in the amount of Special Assessments collected such that, following such reduction, the amount of Special Assessments remaining to be paid shall be equal to the amounts necessary to pay, as and when due, the remaining outstanding principal of the Project Advance, together with interest at the annual rate of []% and a semi-annual ESID Fee. The Parties acknowledge and agree that the County Auditor may calculate, charge, and collect a fee on each installment of the Special Assessments in an amount that the County Auditor deems necessary to defray the expenses of collecting the Special Assessments pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties. Notwithstanding anything in this Agreement to the contrary, the City shall not cause any reduction in the amount of Special Assessments without the prior written consent or instruction of the Finance Authority. The Parties agree that the Finance Authority may certify any reduction required by this Section 2.2(d) to the County Auditor

directly after requesting and receiving the City's consent to certify the reduction on the City's behalf.

- (e) Assignment of Special Assessments. The City agrees that it shall establish its funds for the collection of the Special Assessments as separate funds maintained on the City's books and records and to be held in the custody of a bank with which the City maintains a depository relationship. The City hereby assigns to the Finance Authority all of its right, title and interest in and to: (i) the Special Assessments and Delinquency Amounts received by the City under this Agreement, (ii) the City's special assessment funds established for the Project; and (iii) any other property received or to be received from the City under this Agreement with respect to the Project. The City further shall transfer, set over, and pay the Special Assessments and Delinquency Amounts to the Finance Authority in accordance with this Agreement. The ESID acknowledges and consents to the City's assignment of the Special Assessments to the Finance Authority. The portion of the payment of Special Assessments by or on behalf of the City to the Finance Authority shown on **Exhibit B** shall constitute Bond Service Payments on the OAQDA Bonds. The Parties agree that each of the City, the ESID, and the Finance Authority, as assignee of the Special Assessments, is authorized to take any and all actions, whether at law, or in equity, to collect delinquent Special Assessments levied by the City pursuant to law and to cause the lien securing any delinquent Special 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 Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings.
- (f) Transfer of Special Assessments. The parties anticipate that semi-annual installments of the Special Assessments and any Delinquency Amounts will be paid to the City by the County Auditor and the County Treasurer in accordance with Ohio Revised Code Chapters 319, 321, 323, and 727, which, without limiting the generality of the foregoing, contemplates that the County Auditor and County Treasurer will pay the Special Assessments and any Delinquency Amounts to the City on or before June 1 or December 1 of each year. Immediately upon receipt of any moneys received by the City as Special Assessments or Delinquency Amounts, but in any event not later than fourteen (14) calendar days after the receipt of the corresponding final settlement from the County Auditor, the City shall deliver to the Finance Authority any moneys received by the City as Special Assessments and any Delinquency Amounts. The City shall deliver to the Finance Authority all such moneys received by the City as Special Assessments and Delinquency Amounts by ACH or check as determined in the sole discretion of the City. The payment of the portion of the Special Assessments shown on **Exhibit B** by or on behalf of the City to the Finance Authority shall constitute Bond Service Payments on the OAQDA Bonds. The Finance Authority shall provide the City and the ESID with account and payment information in the form of **Exhibit H** on the date on which this Agreement becomes effective. The Finance Authority may from time to time provide updated account and payment information in the form of **Exhibit H** to the

City and the ESID for the payment of Special Assessments and Delinquency Amounts to the Finance Authority or its trustee or other designee but the City shall maintain its right to send the Special Assessments and Delinquency Amounts by ACH or check in its sole discretion. If at any time during the term of this Agreement the County Auditor agrees, on behalf of the City and the City, to disburse the Special Assessments and Delinquency Amounts directly to the Finance Authority or its trustee or other designee pursuant to instructions or procedures agreed upon by the County Auditor, the City, and the Finance Authority, then, upon each transfer of an installment of the Special Assessments and Delinquency Amounts from the County Auditor to the Finance Authority or its trustee or other designee, the City shall be deemed to have satisfied all of its obligations under this Agreement to transfer that installment of the Special Assessments and Delinquency Amounts to the Finance Authority.

- (g) Repayment of Project Advance. The Finance Authority shall credit, on the dates shown on the Repayment Schedule (which is attached to and incorporated into this Agreement as **Exhibit B**), Special Assessments in the amounts shown on the Repayment Schedule to the payment of accrued interest on the Project Advance and to the repayment of the portion of the principal of the Project Advance scheduled to be repaid on such date. The Finance Authority, on the dates shown on the Repayment Schedule, further shall pay to the ESID, after the payment of accrued interest on the Project Advance and the repayment of the portion of principal of the Project Advance scheduled to be repaid on such date, the payment of a semi-annual ESID Fee or such lesser amount as may be available from the Special Assessments on the applicable date after the payment of accrued interest on the Project Advance and the repayment of the portion of the principal of the Project Advance scheduled to be repaid on such date. The Parties acknowledge and agree that the County Auditor may calculate, charge, and collect a fee on each installment of Special Assessments in an amount that the County Auditor deems necessary to defray the expense of collecting the Special Assessments pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties, and that such fee shall be paid to the County Auditor with the Special Assessments, and that the County Auditor will retain such fee.

Section 2.3. Obligations Unconditional; Place of Payments. The City's obligation to transfer the Special Assessments to the Finance Authority under Section 2.2 of this Agreement shall be absolute and unconditional, 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 Finance Authority, the ESID, or the Owner; 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, and nothing in this Agreement shall be construed to obligate the City to transfer or pledge, and the City shall not transfer or pledge any special assessments not related to the ESID.

Section 2.4. Appropriation by the City; No Further Obligations. Upon the Parties' execution of 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 obligation under this Agreement to pay to the Finance Authority all Special Assessments received by the City. 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 obligation under this Agreement to pay to the Finance Authority all Special Assessments received by the City; provided that 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; and provided further that nothing in this paragraph shall be construed as a waiver of the City's right to be indemnified pursuant to Section 6.4 of this Agreement or pursuant to the Special Assessment Agreement. 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 received by the City as Special Assessments; provided, however, that 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.

Section 2.5. Security for Advanced Funds. To secure the transfer of the Special Assessments and Delinquency Amounts by the City to the Finance Authority, and in accordance with the Special Assessment Act, the ESID hereby assigns, transfers, sets over, and shall pay all of its right, title, and interest in and to the Special Assessments and Delinquency Amounts related to the ESID actually received by or on behalf of the City and the ESID to the Finance Authority. The Owner and the City agree and consent to such assignment.

ARTICLE III: REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 3.1. 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.
- (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. To the City's knowledge, that execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to the City 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, duly has authorized, executed, and delivered this Agreement, and the City has taken all steps necessary to establish this Agreement and the City's

covenants and agreements within 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 contained in Section 2.2(e) is a valid and binding obligation of the City with respect to the Special Assessments received by the City under this Agreement.

Section 3.2. 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, duly has authorized, executed, and delivered this Agreement, and the ESID has taken and all steps necessary to establish this Agreement and the ESID's covenants and agreements within 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.
- (f) The ESID shall provide an opinion of PACE Counsel dated as of the Effective Date to the addressees included in such opinion regarding the enforceability and compliance with applicable law of the Agreement, the Memorandum of Understanding, and the Petition.
- (g) The assignment contained in Section 2.5 is a valid and binding obligation of the ESID with respect to the ESID's right, title and interest in the Special Assessments under this Agreement.

Section 3.3. The Owner's Representations and Warranties. The Owner represents and warrants that:

- (a) It is a corporation duly organized, validly existing and in full force and effect under the laws of the State of Delaware. It has all requisite power to conduct its business as presently conducted and to own, or hold under lease, its assets and properties, and, is duly qualified to do business in all other jurisdictions in which it is required to be qualified, except where failure to be so qualified does not have a material adverse effect on it, and will remain so qualified and in full force and effect during the period during which Special Assessments shall be assessed, due, and payable.
- (b) It, by proper action, duly has authorized, executed, and delivered this Agreement, and it has taken all steps necessary to establish this Agreement and its covenants and agreements within this Agreement as valid and binding obligations, enforceable in accordance with their terms.
- (c) There are no actions, suits or proceedings pending or, to its knowledge, threatened against or affecting it, the Property, or the Project that, if adversely determined, would individually or in the aggregate materially impair its ability to perform any of its obligations under this Agreement, or materially adversely affect its financial condition (an **Action**), and during the term of this Agreement, the Owner shall promptly notify the Finance Authority of any Action commenced or to its knowledge threatened against it.
- (d) It is not in default under this Agreement, and no condition, the continuance in existence of which would constitute a default under this Agreement exists. It is not in default in the payment of any Special Assessments or under any agreement or instrument related to the Special Assessments which has not been waived or allowed.
- (e) Except for any financing of the Property and the lien related thereto that Owner has previously disclosed in writing, it has made no contract or arrangement of any kind, other than this Agreement, which has given rise to, or the performance of which by the other party thereto would give rise to, a lien or claim of lien on the Project, except inchoate statutory liens in favor of suppliers, contractors, architects, subcontractors, laborers or materialmen performing work or services or supplying materials in connection with the acquiring, installing, equipping, and improving of the Project.
- (f) No representation or warranty made by it contained in this Agreement, and no statement contained in any certificate, schedule, list, financial statement or other instrument furnished to the Finance Authority or the ESID by it or on its behalf contained, as of the date thereof, any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

- (g) Since the date of the most recent financial statements of the Owner provided to the Finance Authority, there has been no material adverse change in the financial condition of the Owner, nor has the Owner mortgaged, pledged or granted a security interest in or encumbered the Property since such date, except as otherwise disclosed to the Finance Authority in writing, and the financial statements which have been delivered to the Finance Authority prior to the date of this Agreement are true, correct, and current in all material respects and fairly represent the respective financial conditions of the subjects of the financial statements as of the respective dates of the financial statements.
- (h) The Owner has good and marketable title to its Property, subject only to existing liens, pledges, encumbrances, charges or other restrictions of record previously disclosed by the Owner to the Finance Authority in writing, liens for taxes not yet due and payable, and minor liens of an immaterial nature.
- (i) The Project complies in all material respects with all applicable zoning, planning, building, environmental and other regulations of each Governmental Authority having jurisdiction of the Project, and all necessary permits, licenses, consents and permissions necessary for the Project have been or will be obtained.
- (j) The plans and specifications for the Project are satisfactory to the Owner, have been reviewed and approved by the general contractor for the Project, the tenants under any leases which require approval of the plans and specifications, the purchasers under any sales contracts which require approval of the plans and specifications, any architects for the Project, and, to the extent required by applicable law or any effective restrictive covenant, by all Governmental Authorities and the beneficiaries of any such covenants; all construction of the Project, if any, already performed on the Property has been performed on the Property in accordance with such approved plans and specifications and the restrictive covenants applicable to the plans and specifications; there are no structural defects in the Project or violations of any requirement of any Governmental Authorities having jurisdiction of the Project with respect to the Project; the planned use of the Project complies with applicable zoning ordinances, regulations, and restrictive covenants affecting the Property as well as all environmental, ecological, landmark and other applicable laws and regulations; and all requirements for such use have been satisfied.
- (k) The Owner has the Required Insurance Coverage and will maintain the Required Insurance Coverage at all times during the term of this Agreement, while any principal of or interest on the Project Advance remains outstanding, and while any Special Assessments remain to be paid; provided, however, that the Owner will maintain the Required Builder's Risk Insurance Coverage during construction of the Project. Any return of insurance premium or dividends based upon the Required Insurance Coverage shall be due and payable solely to the Owner or its Lender pursuant to any agreements between the Owner and its Lender, unless such premium shall have been paid by the Finance Authority, in accordance with the distribution priority specified in Section 4.3.

- (l) Each Disbursement Request Form presented to the Finance Authority, and the receipt of the funds requested by the Disbursement Request Form, shall constitute an affirmation that the representations and warranties contained in this Agreement remain true and correct as of the date of the Disbursement Request Form and the receipt of the funds requested by the Disbursement Request Form.
- (m) Each of the Property and the Project are, and at all times during the term of this Agreement, while any principal of or interest on the Project Advance remain outstanding, and while any Special Assessments remain to be paid, used solely for the commercial purposes disclosed by the Owner to the Finance Authority in writing.
- (n) The Project and the plans and specifications for the Project have been developed pursuant to an energy audit prepared by [____], which energy audit demonstrates that the Project is expected to generate approximately \$[_____.] in annual utility bill savings.
- (o) Each of the components of the Project is a qualified “special energy improvement project” pursuant to the definition of that term in Ohio Revised Code Section 1710.01(I).
- (p) At all times during the term of this Agreement, while any principal of or interest on the Project Advance remain outstanding, and while any Special Assessments remain to be paid, the Owner shall comply in all respects with the Special Assessment Act and shall take any and all action necessary to remain in compliance with the Special Assessment Act.

Section 3.4. The Owner’s Additional Agreements. The Owner agrees that:

- (a) It shall not transfer or convey any right, title, or interest, in or to the Property or the Project during the term of this Agreement and for so long as the Special Assessments remain outstanding. At such time as the Owner enters into any written agreement providing for or relating to the transfer, sale, or conveyance of any of its right, title, or interest in or to the Property or the Project, the Owner shall immediately provide written notice to the Finance Authority, the ESID, and the City. The Owner shall prepay the Project Advance to the Finance Authority as set forth in Section 4.7 of this Agreement prior to the transfer, sale, or conveyance of the Property or the Project. Notwithstanding the foregoing, the foregoing restrictions shall not apply to the grant or conveyance of any leasehold interests, mortgage interest, or lien interest, except as may be otherwise provided in this Agreement. Before or simultaneous with any such transfer or conveyance, the Owner shall pay all reasonable legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel.
- (b) It shall pay when due all taxes, assessments, service payments in lieu of taxes, levies, claims and charges of any kind whatsoever that may at any time be lawfully

assessed or levied against or with respect to the Property, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on any portion of the Property. The Owner shall furnish the Finance Authority, upon reasonable request, with proof of payment of any taxes, governmental charges, utility charges, insurance premiums or other charges required to be paid by the Owner under this Agreement. The Parties acknowledge and agree that the foregoing obligation is in addition to the Owner's obligation to pay the Special Assessments.

- (c) It shall not, without the prior written consent of the Finance Authority, cause or agree to the imposition of any special assessments, other than the Special Assessments, on the Property for the purpose of paying the costs of "special energy improvement projects," as that term is defined in Ohio Revised Code Section 1710.01(I), as amended and in effect at the time.
- (d) It shall promptly pay and discharge all claims for labor performed and material and services furnished in connection with the acquisition, construction, equipping, installation, and improvement of the Project.
- (e) Once annually until the Completion Date, the chief financial officer or similar authorized officer of the Owner shall provide the Finance Authority with a certificate setting forth all sources and uses of funds with respect to the Project.
- (f) It promptly shall notify the Finance Authority of any material damage or destruction to the Project or the Property.
- (g) Upon the reasonable request of the Finance Authority, it shall take any actions and execute any further certificates, instruments, agreements, or documents as shall be reasonably necessary in connection with the performance of this Agreement and with the transactions, obligations, and undertakings contained in this Agreement.
- (h) It shall not cause the Property to be subdivided, platted, or otherwise separated into any additional parcels in the records of the County Auditor.
- (i) It does not and will not engage in operations that involve the generation, manufacture, refining, transportation, treatment, storage or handling of hazardous materials or hazardous wastes, as defined in applicable state law, or any other federal, state or local environmental laws or regulations, and to Owner's knowledge neither the Property nor any other of its premises has been so used previously, in each case, except as previously disclosed in writing to the Finance Authority. To Owner's knowledge there are no underground storage tanks located on the Property. There is no past (to Owner's knowledge) or present non-compliance with environmental laws, or with permits issued pursuant thereto, in connection with the Property, which has not been fully remediated in accordance with environmental laws. To Owner's knowledge there is no environmental remediation required (or anticipated to be required) with respect to the Property. The Owner does not know

of, and has not received, any written or oral notice or other communication from any person (including but not limited to a governmental entity) relating to hazardous substances or remediation of hazardous substances, of possible liability of any person pursuant to any environmental law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with the foregoing.

ARTICLE IV: PROJECT ADVANCE; CONSTRUCTION OF PROJECT; REPAYMENT

Section 4.1. Project Advance. The Finance Authority shall make available to the Owner the Project Advance in the initial principal amount of \$1,610,906.43. The principal amount of the Project Advance shall be increased on November 15, 2023 in the amount of \$8,949.48, on May 15, 2024 in the amount of \$40,496.40, November 15, 2024 in the amount of \$41,508.81, and May 15, 2025 in the amount of \$42,546.53, with the above amounts representing interest accruing to each of the above dates. The Finance Authority shall hold the initial principal amount of the Project Advance in a segregated account established in the custody of the Finance Authority, which account shall be referred to as the **Project Account**. Subject to the terms and conditions of this Agreement, the Finance Authority, upon the direction of the Owner, shall disburse amounts on deposit in the Project Account to the Owner or to such parties as may be named by the Owner in order to pay the costs of the Project. A portion of the Project Advance equal to \$[_____] under this Agreement shall constitute the purchase of the equal principal amount of the OAQDA Bonds.

If the Project Advance net funded to the Owner is insufficient to pay the costs of the Project pursuant to this Agreement, the Owner, nevertheless, shall complete the acquisition, installation, equipping, and improvement of the Project, and the Owner shall pay all such additional costs of the Project from its own funds. The Owner shall not be entitled to reimbursement for any such additional costs of the Project, nor shall it be entitled to any abatement, diminution, or postponement of the Special Assessments or an increase in the amount of the Special Assessments.

Section 4.2. Disbursements. In order to cause disbursement of amounts on deposit in the Project Account to pay or reimburse the costs of the Project, the Owner shall submit to the Finance Authority Disbursement Request Forms (a form of which is attached to this Agreement as **Exhibit C**), which Disbursement Request Forms each shall, in part, set forth the payments or reimbursements requested, and shall be accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested. In addition, the following shall occur:

- (a) With each Disbursement Request Form:
 - (i) The Owner shall deliver to the Finance Authority copies of all related receipts and invoices;
 - (ii) The Owner shall deliver to the Finance Authority, as necessary, information detailing any other sources of funds spent to pay any portion of the costs shown on any related receipts and invoices such that all costs shown on related receipts and invoices, including costs not eligible to be paid from the Project Advance, shall be accounted for either as costs being paid by a

- disbursement of a portion of the Project Advance or costs being paid by other sources;
- (iii) The Owner shall deliver to the Finance Authority, as necessary, bank information for wiring the amounts requested for disbursement.
- (b) With the first Disbursement Request Form submitted, in addition to the documents required under Section 4.2(a):
- (i) The Owner shall deliver to the Finance Authority copies of all construction permits required for the construction of the Project;
 - (ii) The Owner shall deliver to the Finance Authority copies of all agreements with all contractors and subcontractors performing work or furnishing materials for the Project;
 - (iii) The Owner shall deliver to the Finance Authority a construction schedule completed by the general contractor for the Project, which includes an anticipated date of completion of the Project; and
 - (iv) The Owner shall deliver to the Finance Authority copies of all current policies of the Required Insurance Coverage;
 - (v) The construction plans and specifications shall have been approved in all respects by the Finance Authority in its sole discretion;
 - (vi) The budget shall have been approved by the Finance Authority in its sole discretion;
 - (vii) The Owner shall deliver to the Finance Authority the written consent of its existing mortgage lender to the levying, assessment, and collection of the Special Assessments, in the form attached to this Agreement as **Exhibit F**;
 - (viii) The Owner shall provide to the Finance Authority evidence acceptable to the Finance Authority, in its sole discretion, that the City Council and the ESID have approved the Project;
 - (ix) The Finance Authority shall receive the executed Memorandum of Understanding and Owner Consent (a form of which is attached to this Agreement as **Exhibit I**) and evidence that the same has been recorded in the records of the County Recorder with respect to the Property;
 - (x) The Owner and the ESID shall provide to the Finance Authority original executed copies of this Agreement and any related certificates;
 - (ix) The Owner shall deliver to the Finance Authority evidence satisfactory to the Finance Authority that all other sources of funding, including, without limitation, new markets tax credit funding, historic tax credit funding, and equity funding, are available to pay the costs of the overall rehabilitation project at the Property of which the Project is contemplated to constitute a part;
 - (xi) ☐], as bond counsel for the OAQDA Bonds, shall have delivered its opinion dated as of the Effective Date in form and substance reasonably acceptable to the OAQDA and the Finance Authority; and
 - (xii) The Issuer Documents and all other documents for the issuance, purchase, sale, and security of the OAQDA Bonds, in form and substance satisfactory to the OAQDA and the Investor, shall have been duly authorized, executed,

and delivered by the respective parties thereto and shall be in full force and effect.

- (c) With the final Disbursement Request Form, in addition to the documents required under Section 4.2(a):
 - (i) The Owner shall deliver to the Finance Authority the executed certificate in the form attached as **Exhibit D** to this Agreement; and
 - (ii) The Owner shall deliver to the Finance Authority copies of all completion inspections and closed permits with respect to the Project.

Upon its receipt of each completed Disbursement Request Form, the Finance Authority shall approve all or a portion of the payment or reimbursements requested to be disbursed from the Project Account. To the extent the Finance Authority approves the payment or reimbursements requested to be disbursed from the Project Account, the Finance Authority shall pay the Owner or such other parties as are indicated on the Disbursement Request Form the amounts described on such Disbursement Request Form which have been approved by the Finance Authority. A portion of the Project Advance equal to \$[] under this Agreement shall constitute the purchase of equal principal amount of the OAQDA Bonds.

Additionally, the Finance Authority shall disburse closing costs related to the financing described in this Agreement in an amount not to exceed \$35,937.43, as detailed in **Exhibit E** to this Agreement to the parties set forth on **Exhibit E** to this Agreement. Without limiting the generality of the foregoing, disbursements made pursuant to this paragraph may be for fees to the Finance Authority, fees to the ESID, legal fees, advisory fees, fees to the City, and other closing costs or contingencies.

Section 4.3. Casualties and Takings. The Owner shall promptly notify the Finance Authority if the Project is damaged or destroyed by fire, casualty, injury or any other cause (each such occurrence, a **Casualty**). Upon the occurrence of such Casualty, the Lender, if any, may elect, in its sole discretion and judgment, to restore the Property and the Project or to terminate the construction of the Project, and in either case, to direct the application of the insurance proceeds pursuant to the terms of Lender's agreement with the Owner, provided that if the insurance proceeds are not used to restore the Property and the Project, insurance proceeds will be distributed first to Lender pursuant to its agreements with the Owner, and next to the Finance Authority for repayment of the outstanding balance of the Special Assessments and any related fees, and any excess proceeds will be paid to the Owner.

Upon the occurrence of a Casualty, if no Person is a Lender at the time of such Casualty, the insurance proceeds shall be applied to pay the costs of the restoration of the Project or to the repayment of the outstanding balance of the Special Assessments, and in which case the Finance Authority shall remain obligated to make disbursements of up to the total amount of the Project Advance in accordance with this Agreement.

In the event restoration of the Project or the Property is pursued, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and

specifications. If, in the Finance Authority's reasonable judgment, said insurance proceeds are insufficient to complete the restoration, the Owner shall deposit with the Finance Authority such amounts as are necessary, in the Finance Authority's reasonable judgment, to complete the restoration in accordance with the plans and specifications.

In the event any part of the Property or the Project shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (a **Taking**), the Lender, if any, may elect, in its sole discretion and judgment, not to restore the Property or the Project or to restore the Property or the Project, and in either case, to direct the application of the proceeds of the Taking pursuant to the terms of its agreements with the Owner. If the Lender determines not to restore the Property or the Project and release funds related thereto to the Owner, the Finance Authority's obligation to make disbursements under this Agreement shall be terminated. If the Lender determines to restore the Property and the Project, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications. If, in the Finance Authority's reasonable judgment, the Taking proceeds available to the Owner and the Finance Authority are insufficient to complete the restoration, the Owner shall deposit with the Finance Authority such amounts as are necessary, in the Finance Authority's reasonable judgment, to complete the restoration in accordance with the plans and specifications.

In the event that no Person is a Lender at the time of such Taking, the Finance Authority's obligation to make disbursements under this Agreement shall be terminated unless the Property and the Project can be replaced and restored in a manner which will enable the Project to be functionally and economically utilized and occupied as originally intended. If the Property and the Project can be so restored, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications, and the Finance Authority shall release the funds for such purpose. If, in the Finance Authority's reasonable judgment, the Taking proceeds available to the Owner and the Finance Authority are insufficient to complete the restoration, the Owner shall deposit with the Finance Authority such amounts as are necessary, in the Finance Authority's reasonable judgment, to complete the restoration in accordance with the plans and specifications.

Section 4.4. Eligible Costs. The costs of the Project which are eligible for payment or reimbursement pursuant to this Agreement include the following:

- (a) costs incurred directly or indirectly for or in connection with the acquisition, installation, equipping, and improvement of the Project, including without limitation, costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, surveying, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work;
- (b) financial, legal, recording, title, accounting, and printing and engraving fees, charges and expenses, and all other fees, charges and expenses incurred in connection with the financing described in this Agreement;

- (c) premiums attributable to any surety and payment and performance bonds and insurance required to be taken out and maintained until the date on which each Project is final and complete;
- (d) taxes, assessments and other governmental charges in respect of the Project that may become due and payable until the date on which each Project is final and complete;
- (e) costs, including, without limitation, attorney's fees, incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project; and
- (f) any other incidental or necessary costs, expenses, fees and charges properly chargeable to the cost of the acquisition, installation, equipping, and improvement of the Project.

Section 4.5. Completion of Project; Inspection. The Owner (a) in accordance with the approved plans and specifications for the Project, which plans and specifications shall not be materially revised without the prior written approval of the Finance Authority, which approval shall not be unreasonably withheld, shall acquire, install, equip, and improve the Project with the Project Advance with all commercially reasonable dispatch, (b) subject to its right to contest any disputed work, shall pay when due all fees, costs and expenses incurred or payable by the Owner in connection with that acquisition, installation, equipment, and improvement from funds made available therefor in accordance with this Agreement or otherwise, and (c) shall ask, demand, sue for, levy, recover and receive all those sums of money, debts and other demands whatsoever which may be due, owing and payable to the Owner under the terms of any contract, order, receipt, writing or instruction in connection with the acquisition, installation, equipping, and improvement of the Project, and shall utilize commercially reasonable efforts to enforce the provisions of any contract, agreement, obligation, bond or other performance security with respect thereto. It is understood that the Project is to be owned by the Owner and any contracts made by the Owner with respect to the Project or any work to be done by the Owner on or with respect to the Project are made or done by the Owner on its own behalf and not as agent or contractor for the ESID.

During the period of acquisition, equipping, installation, and improvement of the Project, the ESID and the Finance Authority, and their respective agents, subject to reasonable security and safety regulations, and upon reasonable prior notice, shall have the right, during normal business hours, to inspect the Project. The ESID and the Finance Authority and their respective agents shall utilize commercially reasonable efforts to minimize interference with the tenants of the Property during any such inspection.

The Finance Authority reserves the right to deny the request for any disbursement from the Project Account pursuant to Article IV of this Agreement if such inspection reveals that construction is not proceeding with reasonable dispatch. If, in the Finance Authority's opinion, after 30 days' written notice to the Owner, the construction is not proceeding with reasonable dispatch, the Finance Authority may (i) request that the Owner remove and replace the general contractor with a general contractor acceptable to the Finance Authority, the failure of which by the Owner shall be a default under this Agreement or (ii) deny any request for disbursement from

the Project Account until such time as the construction resumes proceeding with reasonable dispatch.

The Owner shall notify the ESID, the City, and the Finance Authority of the Completion Date by a certificate in the form attached as **Exhibit D** to this Agreement, signed by the Owner stating: (a) the date on which the acquisition, construction, equipping, installation, and improvement of the Project was substantially completed by the general contractor for the Project in accordance with the construction contract, and the Owner has no unresolved complaints regarding the work; (b) that the Project has been completed in all material respects in accordance with the plans and specifications, permits, and budget for the Project approved by the Finance Authority; (c) that the Owner has complied, and will continue to comply with all applicable statutes, regulations, and ordinances in connection with the Property and the construction of the Project; (d) that the Owner holds fee ownership of the Property; (e) that the general contractor for the project has not offered the Owner any payment, refund, or any commission in return for completing Project; and (f) that all funds provided to the Owner by the Finance Authority for the Project have been used in accordance with this Agreement. The certificate shall be delivered as promptly as practicable after the Completion Date.

Section 4.6. **Repayment.** The Parties acknowledge that pursuant to this Agreement, the Project Advance is expected to be repaid by the Special Assessments. The Parties further acknowledge that the transfer of the portion of the Special Assessments shown on **Exhibit B** from the City to the Finance Authority shall constitute Bond Service Payments on the OAQDA Bonds. The Parties agree that the Special Assessments have been levied and certified to the County Auditor in the amounts necessary to amortize the Project Advance, together with interest at the annual rate of []%, and a semi-annual ESID Fee over 38 semi-annual payments to be collected beginning approximately on January 31, 2025 and continuing through approximately July 31, 2043. The Parties further acknowledge that in addition to the amount of the Special Assessments and other related interest, fees, and penalties, the County Auditor may charge and collect a County Auditor collection fee on each annual installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Auditor pursuant to Ohio Revised Code Section 727.36. Interest shall accrue on the entire amount of the Project Advance from the date of this Agreement; provided, however, that interest accruing on November 15, 2023 in the amount of \$8,949.48, on May 15, 2024 in the amount of \$40,496.40, November 15, 2024 in the amount of \$41,508.81, and May 15, 2025 in the amount of \$42,546.53, with the above amounts representing interest accruing to each of the above dates, shall be added to the principal amount of the Project Advance and repaid with the installments of the Special Assessments. The Owner agrees to pay, as and when due, all Special Assessments with respect to its Property. Notwithstanding anything in this Section 4.6 or this Agreement to the contrary, the Parties acknowledge and agree that, pursuant to the laws of the State, the Special Assessments to be collected by the County Treasurer which as of the relevant date are not yet due and payable never shall be accelerated, and the lien of the Special Assessments never shall exceed the amount of Special Assessments which, as of the relevant date, are due and payable but remain unpaid.

Section 4.7. **Prepayment.** At any time after the Effective Date and prior to the tenth anniversary of the Effective Date, the Owner may prepay any portion of the principal of the Project Advance to the Finance Authority by paying, in immediately available funds, 105% of the

principal amount of the Project Advance to be prepaid, together with all accrued and unpaid interest on the Project Advance to the date of prepayment. At any time after the tenth anniversary of the Effective Date, the Owner may prepay all or a portion of the principal of the Project Advance to the Finance Authority by paying, in immediately available funds, 100% of the principal amount of the Project Advance to be prepaid, together with all accrued and unpaid interest on the Project Advance to the date of prepayment.

Immediately upon any prepayment pursuant to this Section 4.7, the Finance Authority shall notify the City of the prepayment, and the Owner, the Finance Authority, and the ESID shall cooperate with the City to reduce the amount of Special Assessments to be collected by the County Auditor pursuant to Section 2.2(d) of this Agreement.

Section 4.8. Payment of Fees and Expenses. If an Event of Default on the part of the Owner should occur under this Agreement such that the ESID, the City, or the Finance Authority should incur expenses, including but not limited to attorneys' fees, in connection with the enforcement of this Agreement or the collection of sums due under this Agreement, the Owner shall reimburse the ESID, the City, and the Finance Authority, as applicable, for any reasonable out-of-pocket expenses so incurred upon demand. If any such expenses are not so reimbursed, the amount of such expenses, together with interest on such amount from the date of demand for payment at an annual rate equal to the lesser of 10% or the maximum rate allowable by law shall constitute indebtedness under this Agreement, and the ESID, the City, and the Finance Authority, as applicable, shall be entitled to seek the recovery of those expenses in such action except as limited by law or by judicial order or decision entered in such proceedings.

Section 4.9. Further Assurances. Upon the request of the Finance Authority, the Owner shall take any actions and execute any further documents as the Finance Authority deems necessary or appropriate to carry out the purposes of this Agreement.

Section 4.10. Late Installment. Under Section [2.4] of the Memorandum of Understanding, the Parties have agreed to cause any installment of the Special Assessments paid after the date on which it is due and before the expiration of the time period specified under Ohio Revised Code Section 323.121(C) to be reduced to \$0.00 and refunded directly to the Finance Authority as a surplus real property tax payment. Promptly upon receipt of notice or the Finance Authority or the Owner's actual knowledge of any payment to which Section [2.4] of the Memorandum of Understanding would apply, the Owner shall be obligated to pay the installment of the Special Assessments to the Finance Authority and to pay any and all reasonable fees and expenses of PACE Counsel in documenting and executing the payment of the installment. In the event the installment of the Special Assessments is remitted to the Finance Authority as provided in Section [2.4] of the Memorandum of Understanding, the Owner's obligation to pay the installment under this section shall be deemed satisfied. In the event that the installment of the Special Assessments is reduced to \$0.00 and not remitted to the Finance Authority for any reason, the Owner shall be obligated to pay to the Finance Authority the entire amount of such installment of the Special Assessments, together with interest on such amount from the date on which the Finance Authority expected to receive such payment under the Energy Project Cooperative Agreement at an annual interest rate equal to the lesser of the 12% or the maximum amount allowed by law.

ARTICLE V: EVENTS OF DEFAULT AND REMEDIES

Section 5.1. Events of Default. If any of the following shall occur, such occurrence shall be an **Event of Default** under this Agreement:

- (a) The Owner shall fail to pay an installment of the Special Assessments when due, after taking into account all applicable extensions;
- (b) The City shall fail to appropriate in any fiscal year the Special Assessments payable to the Finance Authority pursuant to this Agreement in such fiscal year, or shall fail to transfer, or cause the transfer of, any of the Special Assessments to the Finance Authority within the time specified in this Agreement;
- (c) Any Party is in material breach of its representations or warranties under this Agreement; provided, however, that upon the material breach of a Party's representations or warranties under this Agreement, such Party shall have the right to cure such breach within 5 days of the receipt of notice, and, if so cured, such breach shall not constitute an Event of Default;
- (d) The ESID, the City, or the Owner shall fail to observe and perform any other agreement, term, or condition contained in this Agreement, and the continuation of such failure for a period of 30 days after written notice of such failure shall have been given to the ESID, the City, or the Owner, as applicable, by any other Party to this Agreement, or for such longer period to which the notifying Party may agree in writing; provided, however, that if the failure is other than the payment of money, and is of such 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 ESID, the City, or the Owner, as applicable, institutes curative action within the applicable period and diligently pursues that action to completion;
- (e) The Owner abandons its Property or the Project;
- (f) The Owner commits waste upon its Property or the Project;
- (g) The Owner becomes bankrupt or insolvent or files or has filed against it (and such action is not stayed or dismissed within 90 days) a petition in bankruptcy or for reorganization or arrangement or other relief under the bankruptcy laws or any similar state law or makes a general assignment for the benefit of creditors; or
- (h) Any workmanship or materials constituting a portion of the Project or incorporated into the Project shall be materially defective and shall not be corrected within 30 days after notice.

The declaration of an Event of Default above, and the exercise of remedies upon any such declaration, 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.

Promptly upon any non-defaulting Party becoming aware that an Event of Default has occurred, such Party shall deliver notice of such Event of Default to each other Party under this Agreement in accordance with the notice procedures described in Section 6.5 of this Agreement.

Section 5.2. 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) Upon an Event of Default described in Section 5.1(a) only, the Finance Authority shall be entitled to receive any Delinquency Amounts actually received by the City.
- (b) The ESID and the Finance Authority, together or separately, 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 any of the Parties, as applicable, under this Agreement, including enforcement under Ohio Revised Code Chapter 2731 of duties resulting from an office, trust, or station upon the ESID, provided that, the Parties may only pursue such remedies against the Party responsible for the particular Event of Default in question; provided, however, that the ESID and the Finance Authority may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default.
- (c) Any Party may pursue any other remedy which it may have, whether at law, in equity, or otherwise, provided that, Parties may only pursue such remedies against the Party responsible for the particular Event of Default in question; provided, however, that the ESID and the Finance Authority may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default.

Notwithstanding the foregoing, the Finance Authority, the Owner, and the ESID agree that the ESID and the City shall not be obligated to take any step which in the ESID's or the City's opinion, respectively, will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to it by the Owner at no cost or expense to the ESID, the City, or the Finance Authority.

Section 5.3. Foreclosure. Pursuant to Section 2.2 of the Memorandum of Understanding, the County Treasurer has agreed not to confirm the sale of the Property for an amount less than 100% of the amount of the Special Assessments and other general real estate taxes, payments in lieu of taxes, and assessments then due and owing with respect to the Property, as shall be certified by the ESID to the County Treasurer pursuant to the records of the County Treasurer without the consent of the ESID and the Finance Authority.

Section 5.4. 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; provided, however, that the ESID, the City, and the Finance Authority may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power nor shall be construed to be a waiver, 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 it in this Article, 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.

Section 5.5. No Waiver. No failure by a Party to insist upon the strict performance by the other Parties of any provision of this Agreement shall constitute a waiver of such 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.

Section 5.6. Notice of Default. Any Party to this Agreement shall notify every other Party to this Agreement immediately 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 or passage of time or both, would become an Event of Default.

ARTICLE VI: MISCELLANEOUS

Section 6.1. Owner Waivers. The Owner acknowledges that the process for the imposition of special assessments provides the owner of property subject to such special assessments with certain rights, including rights to: receive notices of proceedings; object to the imposition of the special assessments; claim damages; participate in hearings; take appeals from proceedings imposing special assessments; participate in and prosecute court proceedings, as well as other rights under law, including but not limited to those provided for or specified in the United States Constitution, the Ohio Constitution, Ohio Revised Code Chapter 727, the Charter of the City and the ordinances in effect in the City (collectively, **Assessment Rights**). The Owner irrevocably waives all Assessment Rights as to the Project and consents to the imposition of the Special Assessments as to the Project immediately or at such time as the ESID determines to be appropriate, and the Owner expressly requests the entities involved with the special assessment process to promptly proceed with the imposition of the Special Assessments upon its Property as to its Energy Project. The Owner further waives in connection with the Project: any and all questions as to the constitutionality of the laws under which the Project will be constructed and the Special Assessments imposed upon the Property; the jurisdiction of the Council of the City acting thereunder; and the right to file a claim for damages as provided in Ohio Revised Code Section 727.18 and any similar provision of the Charter of the City or the ordinances in effect within the City.

Section 6.2. Term of Agreement. This Agreement shall be and remain in full force and effect from the date of execution and delivery until the payment in full of the entire aggregate amount of the Special Assessments shall have been made to the Finance Authority and the obligations (if any) of each Party under Section 6.4 shall have been fully satisfied, or such time as

the Parties shall agree in writing to terminate this Agreement. Any attempted termination of this Agreement prior to the payment in full of the entire aggregate amount of the Special Assessments which is not in writing and signed by each of the Parties to this Agreement shall be null and void.

Section 6.3. 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 perform its obligations under this Agreement. The notifying Party's prompt notice shall be accompanied by its written statement setting forth 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 Party.

Section 6.4. Indemnification. The Owner shall indemnify and hold harmless the ESID, the Finance Authority, and the City (including any member, officer, director, or employee thereof) (collectively, the **Indemnified Parties**) against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon, incurred by or asserted against an Indemnified Party arising or resulting from (i) the levy and collection of the Special Assessments, (ii) Owner's financing, acquisition, construction, installation, operation, use or maintenance of the Project, (iii) any act, failure to act or misrepresentation solely by the Owner in connection with, or in the performance of any obligation on the Owner's part to be performed under this Agreement or related to the Special Assessments resulting in material actual damages, or (iv) (a) a past, present or future violation or alleged violation of any environmental laws in connection with the Property by any person or other source, whether related or unrelated to the Owner, (b) any presence of any hazardous, toxic or harmful substances, materials, wastes, pollutants or contaminants defined as such in or regulated under any environmental law (**Materials of Environmental Concern**) in, on, within, above, under, near, affecting or emanating from the Property, (c) the failure to timely perform any investigation, inspection, site monitoring, containment, clean-up, removal, response, corrective action, mitigation, restoration or other remedial work of any kind or nature because of, or in connection with, the current or future presence, suspected presence, Release (as defined below) or threatened Release in or about the air, soil, ground water, surface water or soil vapor at, on, about, under or within all or any portion of the Property of any Materials of Environmental Concern, including any action to comply with any applicable environmental laws or directives of any governmental authority with regard to any environmental laws, (d) any past, present or future activity by any person or other source, whether related or unrelated to the Owner in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Materials of Environmental Concern at any time located in, under, on, above or affecting the Property, (e) any past, present or future actual generation, treatment, use, storage, transportation, manufacture, refinement, handling, production, removal, remediation, disposal, presence or migration of Materials of Environmental Concern on, about, under or within all or any portion of the Property (a **Release**) (whether intentional or unintentional, direct or indirect, foreseeable or unforeseeable) to, from, on, within, in, under, near or affecting the Property by any person or other source, whether related or unrelated to the Owner, (f) the imposition, recording or filing or the threatened imposition, recording or filing of any lien on the Property with regard to, or as a result of, any Materials of Environmental Concern or pursuant to any environmental law, or (g) any

misrepresentation or failure to perform any obligations related to environmental matters in any way pursuant to any documents related to the Special Assessments.

In the event any action or proceeding is brought against any Indemnified Party by reason of any such claim, such Indemnified Party will promptly give written notice thereof to the Owner. The Owner shall be entitled to participate at its own expense in the defense or, if it so elects, to assume at its own expense the defense of such claim, suit, action or proceeding, in which event such defense shall be conducted by counsel chosen by the Owner; but if the Owner shall elect not to assume such defense, it shall reimburse such Indemnified Party for the reasonable fees and expenses of any counsel retained by such Indemnified Party. If at any time the Indemnified Party becomes dissatisfied, in its reasonable discretion, with the selection of counsel by the Owner, a new mutually agreeable counsel shall be retained at the expense of the Owner. Each Indemnified Party agrees that the Owner shall have the sole right to compromise, settle or conclude any claim, suit, action or proceeding against any of the Indemnified Parties. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ counsel in any such action at their own expense; and provided further that such Indemnified Party shall have the right to employ counsel in any such action and the fees and expenses of such counsel shall be at the expense of the Owner, if: (i) the employment of counsel by such Indemnified Party has been authorized by the Owner, (ii) there reasonably appears that there is a conflict of interest between the Owner and the Indemnified Party in the conduct of the defense of such action (in which case the Owner shall not have the right to direct the defense of such action on behalf of the Indemnified Party) or (iii) the Owner shall not in fact have employed counsel to assume the defense of such action. The Owner shall also indemnify the Indemnified Parties from and against all costs and expenses, including reasonable attorneys' fees, lawfully incurred in enforcing any obligations of the Owner under this Agreement. The obligations of the Owner under this Section shall survive the termination of this Agreement and shall be in addition to any other rights, including without limitation, rights to indemnity which any Indemnified Party may have at law, in equity, by contract or otherwise.

None of the Finance Authority, the City, or the ESID shall have any liability to the Owner or any other Person on account of (i) the Owner engaging a contractor from the list of contractors submitted by the ESID or the Finance Authority to the Owner, (ii) the services performed by the contractor, or (iii) any neglect or failure on the part of the contractor to perform or properly perform its services. None of the Finance Authority, the City, or the ESID assumes any obligation to the Owner or any other Person concerning contractors, the quality of construction of the Project or the absence of defects from the construction of the Project. The making of a Project Advance by the Finance Authority shall not constitute the Finance Authority's approval or acceptance of the construction theretofore completed. The Finance Authority's inspection and approval of the budget, the construction work, the improvements, or the workmanship and materials used in the improvements, shall impose no liability of any kind on the Finance Authority, the sole obligation of the Finance Authority as the result of such inspection and approval being to make disbursements from the Project Account if, and to the extent, required by this Agreement. Any disbursement made by the Finance Authority without the Finance Authority having received each of the items to which it is entitled under this Agreement shall not constitute breach or modification of this Agreement, nor shall any written amendment to this Agreement be required as a result.

Section 6.5. 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. The Parties, 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.

Section 6.6. Extent of Covenants; No Personal Liability. All covenants, obligations, and agreements of the ESID and the City 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 ESID, the Board, the Owner, the City, the City Council, the Finance Authority, or the Board of Directors of the Finance Authority in other than his or her official capacity; and none of the members of the Board, the City Council, or the Board of Directors of the Finance Authority, nor any official of the ESID, the City, the Owner, or the Finance Authority 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 ESID, the City, the Owner, or the Finance Authority contained in this Agreement.

Section 6.7. Binding Effect; Assignment; Estoppel Certificates. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Parties. Except as specifically provided below, this Agreement shall not be assigned by the any of the Parties except as may be necessary to enforce or secure payment of the Special Assessments.

Notwithstanding anything in this Agreement to the contrary, the Owner shall not freely sell the Property and the Project or any portion of the Property and the Project during the term of this Agreement and while the Special Assessments remain outstanding. In the event the Owner enters into any written agreement providing for or relating to the transfer, sale, or conveyance of any of its right, title, or interest in or to the Property or the Project, the Owner shall immediately provide written notice to the Finance Authority, the ESID, and the City. The Owner shall prepay the Project Advance to the Finance Authority as set forth in Section 4.7 of this Agreement prior to the transfer, sale, or conveyance of the Property or the Project. Notwithstanding the foregoing, the foregoing restrictions shall not apply to the grant or conveyance of any leasehold interests, mortgage interest, or lien interest, except as may be otherwise provided in this Agreement. Before or simultaneous with any such transfer or conveyance, the Owner shall pay all reasonable legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel.

Notwithstanding anything in this Agreement to the contrary, the Finance Authority shall have the unrestricted right at any time or from time to time, and without the Owner's consent, to assign all or any portion of its rights and obligations under this Agreement, and may sell or assign any and all liens received directly or indirectly from the City to any Person (each, a **Finance Authority Assignee**), and the Owner agrees that it shall execute, or cause to be executed, such documents, including without limitation, amendments to this Agreement and to any other documents, instruments and agreements executed in connection with this Agreement as the Finance Authority shall deem necessary to effect the foregoing so long as such amendment does not materially adversely impact the Owner's rights and obligations under this Agreement. Any Finance Authority Assignee shall be a party to this Agreement and shall have all of the rights and

obligations of the Finance Authority under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to the extent that such rights and obligations have been assigned by the Finance Authority pursuant to the assignment documentation between the Finance Authority and such Finance Authority Assignee, and the Finance Authority shall be released from its obligations under this Agreement and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement to a corresponding extent. If, at any time, the Finance Authority assigns any of the rights and obligations of the Finance Authority under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to a Finance Authority Assignee, the Finance Authority shall (i) give prompt notice of such assignment to the other Parties and (ii) pay all legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel. At the same time as and with any assignment of this Agreement or the Finance Authority's right to receive the Special Assessments under this Agreement by the Finance Authority as described above, the Finance Authority also shall assign all of its rights, title, and interest in and to, and all of its obligations under the Memorandum of Understanding, the Owner Consent, the Bond Purchase Agreement, the OAQDA Bonds, the Ohio Air Quality Development Authority Pledge Agreement dated as of [____], 2023 between the Finance Authority and the OAQDA, and the Finance Authority Pledge Agreement dated as of [____], 2023 between the Finance Authority and the OAQDA to the Finance Authority Assignee to whom this Agreement or the right to receive the Special Assessments under this Agreement has been assigned.

In addition, the Finance Authority shall have the unrestricted right at any time and from time to time, and without the consent of or notice of the Owner, to grant to one or more Persons (each, a **Participant**) participating interests in Finance Authority's obligation to make the Project Advance under this Agreement or to any or all of the loans held by Finance Authority under this Agreement. In the event of any such grant by the Finance Authority of a participating interest to a Participant, whether or not upon notice to the Owner, the Finance Authority shall remain responsible for the performance of its obligations under this Agreement, and the Owner shall continue to deal solely and directly with the Finance Authority in connection with the Finance Authority's rights and obligations under this Agreement. The Owner agrees that the Finance Authority may furnish any information concerning the Owner in its possession from time to time to prospective Finance Authority Assignees and Participants.

This Agreement may be enforced only by the Parties, their permitted assignees, and others, who may, by law, stand in their respective places.

Any Party shall at any time and from time to time, upon not less than 30 days' prior written notice by the other party, execute, acknowledge and deliver to such party a statement in writing certifying that: (i) this Agreement is unmodified and in full force and effect (or, if there has been any modification of this Agreement, that the same is in full force and effect as modified and stating the modification or modifications); (ii) to the best of such Party's actual knowledge (without any duty of inquiry) there are no continuing Events of Default (or, if there is a continuing Event of Default, stating the nature and extent of such Event of Default); (iii) that, to the best of such Party's actual knowledge (without any duty of inquiry) there are no outstanding damages or liability arising from an Event of Default (or, if there is any outstanding damages or liability, stating the nature and extent of such damages or liability); (iv) if such certificate is being delivered by the

Owner, the dates to which the Special Assessments have been paid; and (v) if such certificate is being delivered by the Finance Authority, the dates to which the Special Assessments have been paid to the Finance Authority. It is expressly understood and agreed that any such certificate delivered pursuant to this Section 6.7 may be relied upon by any prospective assignee of the Owner or any prospective Finance Authority Assignee.

Section 6.8. Amendments and Supplements. Except as otherwise expressly provided in this Agreement, this Agreement may not be amended, changed, modified, altered or terminated except by unanimous written agreement signed by each of the Parties materially affected by such proposed amendment, change, modification, alteration, or termination. For purposes of this Section, a materially affected Party is a Party with respect to which a material right or obligation under this Agreement is proposed to be amended, changed, modified, altered, or terminated. Any attempt to amend, change, modify, alter, or terminate this Agreement except by unanimous written agreement signed by all of the materially affected Parties or as otherwise provided in this Agreement shall be void.

Section 6.9. 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.

Section 6.10. 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.

Section 6.11. 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.

[BALANCE OF PAGE INTENTIONALLY BLANK; SIGNATURES ON NEXT PAGE]

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

BEXLEY, COLUMBUS, DUBLIN, GAHANNA, GRANDVIEW
HEIGHTS, GROVE CITY, HILLIARD, MARBLE CLIFF,
PERRY TOWNSHIP, SHARON TOWNSHIP, WHITEHALL,
WORTHINGTON REGIONAL ENERGY SPECIAL
IMPROVEMENT DISTRICT, INC., D/B/A:

COLUMBUS REGIONAL ENERGY SPECIAL
IMPROVEMENT DISTRICT, INC., as the ESID

By: _____

Name: _____

Title: _____

DLZ CORPORATION
as the Owner

By: _____
Name: _____
Title: _____

COLUMBUS-FRANKLIN COUNTY
FINANCE AUTHORITY, as the Finance
Authority

By: _____

Name: _____

Title: _____

CITY OF WORTHINGTON, OHIO, as the City

Approved as to Form:

By: _____

By: _____

Tom Lindsey
Director of Law

Name: _____

Title: _____

CITY FISCAL OFFICER CERTIFICATE

The undersigned, Fiscal Officer of the City of Worthington, Ohio, hereby certifies that the moneys required to meet the obligations of the City during the year 2023 (\$0.00) under the foregoing Energy Project Cooperative Agreement have been lawfully appropriated by the City Council of the City of Worthington, Ohio for such purpose and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Fiscal Officer
City of Worthington, Ohio

Dated: _____, 2023

EXHIBIT A
DEFINITIONS

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

“*Agreement*” means this Energy Project Cooperative Agreement, dated as of [____], by and among the ESID, the City the Owner, and the Finance Authority, as the same may be amended, modified, or supplemented from time to time in accordance with its terms.

“*Board*” means the Board of Directors of the ESID.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement between the Finance Authority, the Owner, and the OAQDA, dated as of [____], 2023, as the same may be amended, modified, or supplemented from time to time in accordance with its terms, under which the Finance Authority has agreed to purchase the OAQDA Bonds to provide financing for the costs of the Project.

“*Bond Service Payments*” means the principal of, and interest and any premium on, the OAQDA Bonds.

“*City*” means the City of Worthington, Ohio.

“*City Council*” means the Council of the City of Worthington, Ohio.

“*Completion Date*” means the latest date on which substantial completion of the Project, in accordance with the Plans occurs, which date shall be established by the Completion Certificate attached to this Agreement as **Exhibit D**.

“*County*” means Franklin County, Ohio.

“*County Auditor*” means the Auditor of the County.

“*County Recorder*” means the Recorder of the County.

“*County Prosecutor*” means the Prosecuting Attorney of the County.

“*County Treasurer*” means the Treasurer of the County.

“*Delinquency Amounts*” means any penalties or interest which may be due on or with respect to any installment of the Special Assessments and which are not paid or payable to any party (other than the Finance Authority under this Agreement) under law.

“*Disbursement Request Form*” means the form attached to this Agreement as **Exhibit C**, which form shall be submitted by the Owner in order to receive disbursements from the Project Account.

“*Effective Date*” means the date set forth in the preamble of this Agreement.

“*ESID*” means the Bexley, Columbus, Dublin, Gahanna, Grandview Heights, Grove City, Hilliard, Marble Cliff, Perry Township, Sharon Township, Upper Arlington, Whitehall, Worthington Regional Energy Special Improvement District, Inc., doing business under the registered trade name Columbus Regional Energy Special Improvement District, Inc., a nonprofit corporation and energy special improvement district organized under the laws of the State of Ohio.

“*ESID Fee*” means the administrative fee due to the ESID from the Finance Authority upon receipt of each semi-annual installment of the Special Assessments which shall be equal to 0.50% of each semi-annual installment of the Special Assessments.

“*Governmental Authority*” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“*Issuer Documents*” means the Bond Purchase Agreement, the Ohio Air Quality Development Authority Pledge Agreement dated as of [____], 2023 between the Finance Authority and OAQDA, and the Finance Authority Pledge Agreement dated as of [____], 2023 between the Finance Authority and OAQDA.

“*Lender*” means any Person which has loaned money to the Owner to pay or refinance the costs of acquiring, financing, refinancing, or improving the Property and which loan is secured by a mortgage interest in the Property, or any permitted successors or assigns of such Person.

“*Notice Address*” means:

- | | | |
|-----|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) | As to the City: | City of Worthington, Ohio
6550 North High Street
Worthington, Ohio 43085
Attention: Finance Director |
| (b) | As to the ESID: | Columbus Regional Energy Special
Improvement District, Inc.
c/o Columbus-Franklin County
Finance Authority
300 Spruce Street, Suite 220
Columbus, Ohio 43215
Attention: Jean Carter Ryan |

With a Copy To:	J. Caleb Bell, Esq. Bricker Graydon LLP 100 S. Third Street Columbus, Ohio 43215
-----------------	-------------------------------------------------------------------------------------------

(c) As to the Owner DLZ Corporation
6121 Huntley Road
Columbus, Ohio 43229
Attention: Ram Rajadhyaksha

With a Copy To: DLZ Corporation
6121 Huntley Road
Columbus, Ohio 43229
Attention: General Counsel

(d) As to the Finance Columbus-Franklin County
Authority Finance Authority
300 Spruce Street, Suite 220
Columbus, Ohio 43215
Attention: President

“*OAQDA*” means the Ohio Air Quality Development Authority.

“*OAQDA Bonds*” means bonds issued by the OAQDA and purchased by the Finance Authority under the Bond Purchase Agreement.

“*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.

“*Owner*” means DLZ Corporation, a corporation duly organized and validly existing under the laws of the State of Delaware, and any permitted successors or assigns.

“*Owner Consent*” means the Owner Consent dated [____], 2023 by Owner and recorded in the records of the Franklin County Recorder with respect to the Property.

“*PACE Counsel*” means Bricker Graydon LLP, an Ohio limited liability partnership.

“*Parties*” means the ESID, the Owner, the City, and the Finance Authority.

“*Party*” means, individually, any one of the Parties.

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

“Program Plan” means the Columbus Regional Energy Special Improvement District Program Plan adopted by the City of Columbus, Ohio by its Resolution No. 0261X-2015 of November 23, 2015, and any and all supplemental plans approved by the ESID and the City, including, without limitation, the Supplemental Plan.

“Project” means the special energy improvement project described in the Supplemental Plan with respect to the Property, for which Special Assessments are to be levied by the City, all in accordance with the Supplemental Plan.

“Project Account” means the segregated account in the custody of the Finance Authority for the benefit of the Owner which contains the Project Advance, and out of which disbursements may be made in accordance with Article IV of this Agreement.

“Project Advance” means the aggregate amount of \$1,744,407.65, consisting of (i) the initial principal amount of \$1,610,906.43 of immediately available funds to be transferred, set over, and paid to and held in the Project Account established pursuant to Section 4.1 of this Agreement for the benefit of the Owner and (ii) interest accruing on November 15, 2023, May 15, 2024, November 15, 2024, and May 15, 2025 in the amount of \$133,501.22, with the above accrued interest amount being added to the principal amount of the Project Advance.

“Property” means the real property subject to the Program Plan.

“Repayment Schedule” means the schedule attached to and incorporated into this Agreement as **Exhibit B**, which schedule establishes the dates and amounts for the repayment of the Project Advance by the Special Assessments paid by the Owner.

“Required Builder’s Risk Insurance Coverage” means at any time insurance coverage maintained with generally recognized, responsible insurance companies qualified to do business in the State in the minimum amount of the full replacement value of the Project and Project Site, insuring the Project against loss or damage during construction and containing loss deductible provisions not to exceed \$100,000, which insurance coverage shall name the Finance Authority as lender loss payee.

“Required Business Interruption Insurance Coverage” means at all times after the Completion Date, business interruption and rent loss insurance maintained with generally recognized, responsible insurance companies qualified to do business in the State in a commercially reasonable minimum amount, which insurance coverage shall name the Finance Authority as lender loss payee.

“Required Flood Insurance Coverage” means, as applicable, (i) if the Property or any part of the Property is identified by the United States Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to the lesser of: (a) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Project Advances if replacement cost coverage is not available for the type of building insured); or (b)

such lesser amount as may be required by the Finance Authority, and containing a loss deductible with respect not in excess of \$10,000 per occurrence; and (ii) earthquake insurance in amounts and in form and substance satisfactory to the Finance Authority in the event the Property is located in an area with a high degree of seismic activity, provided that the insurance pursuant to this section shall be on terms consistent with the Required Public Liability Insurance Coverage.

“Required Insurance Coverage” means, collectively, the Required Builder’s Risk Insurance Coverage, the Required Business Interruption Insurance Coverage, the Required Flood Insurance Coverage (if any), the Required Property Insurance Coverage and the Required Public Liability Insurance Coverage, each of which, in addition to the requirements described in their respective definitions, (i) must provide for 10 days’ notice to the Finance Authority in the event of cancellation or nonrenewal and (ii) must name as an additional insured (mortgagee/loss payee) the Finance Authority.

“Required Property Insurance Coverage” means at any time insurance coverage evidenced maintained with generally recognized, responsible insurance companies qualified to do business in the State in the amount of the then full replacement value of the Project and Property, insuring the Project against loss or damage by fire, windstorm, tornado and hail and extended coverage risks on a comprehensive all risk/special form insurance policy and containing loss deductible provisions of not to exceed \$10,000, which insurance coverage shall name the Finance Authority as loss payee/mortgagee.

“Required Public Liability Insurance Coverage” means at any time commercial general liability insurance against claims for personal injury, death or property damage suffered by others upon, in or about any premises occupied by the Owner, which insurance coverage shall name the Finance Authority as an additional insured as to the Property.

“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, the Resolution of Necessity, the Ordinance to Proceed, and the Ordinance Levying Assessments.

“Special Assessments” means the special assessments levied pursuant to the Special Assessment Act, the Resolution of Necessity, the Ordinance to Proceed, and the Ordinance Levying Assessments by the City with respect to the Project, a schedule of which is attached to and incorporated into the Program Plan.

“State” means the State of Ohio.

“Supplemental Plan” means the Columbus Regional Energy Special Improvement District Project Plan Supplement to Plan for 6121 Huntley Road, Worthington, Ohio Project.

EXHIBIT B

REPAYMENT SCHEDULE

Borrower Payment Date	Payment to Lender on	Principal	Interest 5.00%	Trustee Fee	ESID Admin Fee	Accrued Interest	Semiannual Assessment	Outstanding Balance
	10/05/23							\$ 1,610,906.43
	11/15/23	\$ -	\$ 8,949.48	\$ -	\$ -	\$ (8,949.48)	\$ -	1,619,855.91
	05/15/24	-	40,496.40	-	-	(40,496.40)	-	1,660,352.31
	11/15/24	-	41,508.81	-	-	(41,508.81)	-	1,701,861.12
	05/15/25	-	42,546.53	-	-	(42,546.53)	-	1,744,407.64
01/31/25	11/15/25	28,032.84	43,610.19	250.00	359.47	-	72,252.50	1,716,374.81
07/31/25	05/15/26	28,733.66	42,909.37	250.00	359.47	-	72,252.50	1,687,641.15
01/31/26	11/15/26	29,452.00	42,191.03	250.00	359.47	-	72,252.50	1,658,189.15
07/31/26	05/15/27	30,188.30	41,454.73	250.00	359.47	-	72,252.50	1,628,000.85
01/31/27	11/15/27	30,943.01	40,700.02	250.00	359.47	-	72,252.50	1,597,057.84
07/31/27	05/15/28	31,716.58	39,926.45	250.00	359.47	-	72,252.50	1,565,341.26
01/31/28	11/15/28	32,509.50	39,133.53	250.00	359.47	-	72,252.50	1,532,831.77
07/31/28	05/15/29	33,322.23	38,320.79	250.00	359.47	-	72,252.50	1,499,509.53
01/31/29	11/15/29	34,155.29	37,487.74	250.00	359.47	-	72,252.50	1,465,354.24
07/31/29	05/15/30	35,009.17	36,633.86	250.00	359.47	-	72,252.50	1,430,345.07
01/31/30	11/15/30	35,884.40	35,758.63	250.00	359.47	-	72,252.50	1,394,460.67
07/31/30	05/15/31	36,781.51	34,861.52	250.00	359.47	-	72,252.50	1,357,679.16
01/31/31	11/15/31	37,701.05	33,941.98	250.00	359.47	-	72,252.50	1,319,978.11
07/31/31	05/15/32	38,643.57	32,999.45	250.00	359.47	-	72,252.50	1,281,334.54
01/31/32	11/15/32	39,609.66	32,033.36	250.00	359.47	-	72,252.50	1,241,724.87
07/31/32	05/15/33	40,599.91	31,043.12	250.00	359.47	-	72,252.50	1,201,124.97
01/31/33	11/15/33	41,614.90	30,028.12	250.00	359.47	-	72,252.50	1,159,510.06
07/31/33	05/15/34	42,655.28	28,987.75	250.00	359.47	-	72,252.50	1,116,854.79
01/31/34	11/15/34	43,721.66	27,921.37	250.00	359.47	-	72,252.50	1,073,133.13
07/31/34	05/15/35	44,814.70	26,828.33	250.00	359.47	-	72,252.50	1,028,318.43
01/31/35	11/15/35	45,935.07	25,707.96	250.00	359.47	-	72,252.50	982,383.36
07/31/35	05/15/36	47,083.44	24,559.58	250.00	359.47	-	72,252.50	935,299.92
01/31/36	11/15/36	48,260.53	23,382.50	250.00	359.47	-	72,252.50	887,039.39
07/31/36	05/15/37	49,467.04	22,175.98	250.00	359.47	-	72,252.50	837,572.35
01/31/37	11/15/37	50,703.72	20,939.31	250.00	359.47	-	72,252.50	786,868.63
07/31/37	05/15/38	51,971.31	19,671.72	250.00	359.47	-	72,252.50	734,897.31
01/31/38	11/15/38	53,270.59	18,372.43	250.00	359.47	-	72,252.50	681,626.72
07/31/38	05/15/39	54,602.36	17,040.67	250.00	359.47	-	72,252.50	627,024.36
01/31/39	11/15/39	55,967.42	15,675.61	250.00	359.47	-	72,252.50	571,056.94
07/31/39	05/15/40	57,366.60	14,276.42	250.00	359.47	-	72,252.50	513,690.34
01/31/40	11/15/40	58,800.77	12,842.26	250.00	359.47	-	72,252.50	454,889.57
07/31/40	05/15/41	60,270.79	11,372.24	250.00	359.47	-	72,252.50	394,618.78
01/31/41	11/15/41	61,777.56	9,865.47	250.00	359.47	-	72,252.50	332,841.22
07/31/41	05/15/42	63,322.00	8,321.03	250.00	359.47	-	72,252.50	269,519.22
01/31/42	11/15/42	64,905.05	6,737.98	250.00	359.47	-	72,252.50	204,614.18
07/31/42	05/15/43	66,527.67	5,115.35	250.00	359.47	-	72,252.50	138,086.50
01/31/43	11/15/43	68,190.87	3,452.16	250.00	359.47	-	72,252.50	69,895.64
07/31/43	05/15/44	69,895.64	1,747.39	250.00	359.47	-	72,252.50	0.00
Totals		\$ 1,744,407.64	\$ 1,111,528.62	\$ 9,500.00	\$ 13,659.86	\$ (133,501.21)	\$ 2,745,594.91	

EXHIBIT C

DISBURSEMENT REQUEST FORM

**STATEMENT NO. [] REQUESTING AND
AUTHORIZING DISBURSEMENT OF FUNDS PURSUANT
TO SECTION 4.2 OF THE ENERGY PROJECT
COOPERATIVE AGREEMENT DATED AS OF [],
2023.**

Amount Requested: \$ _____

Pursuant to Section 4.2 of the Energy Project Cooperative Agreement dated as of [], 2023 (the **Agreement**) among the City, the ESID, the Owner, and the Finance Authority, the undersigned authorized representative of DLZ Corporation, as the Owner under the Agreement, hereby requests the Finance Authority having custody of the Project Account, to pay to the Owner or the other person(s) listed on the disbursement schedule attached hereto as Appendix I (the **Disbursement Schedule**), the respective amounts specified in the Disbursement Schedule out of the moneys on deposit in the Project Account for the advances, payments and expenditures made in connection with the costs of the Project described in the Disbursement Schedule, all in accordance with Section 4.2 of the Agreement (capitalized words and terms not otherwise defined herein having the meanings assigned to them in the Agreement).

In connection with this request and authorization (the **Disbursement Request**), the undersigned hereby certifies that:

- (i) each of the representations and warranties made by the Owner in the Agreement remains true and correct, in all material respects, as of the date of this Disbursement Request and no Event of Default by the Owner under the Agreement exists;
- (ii) each item for which disbursement is requested by this Disbursement Request is properly payable out of the Project Account in accordance with the terms and conditions of the Agreement and, except as otherwise noted, none of those items has formed the basis for any disbursement heretofore made from the Project Account;
- (iii) to the extent any portion of the payment requested is for construction work, the Owner has received and herewith delivers to the Finance Authority, conditional waivers of any mechanics' or other liens with respect to such work;
- (iv) this Disbursement Request and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Finance Authority for its actions taken pursuant hereto; and
- (v) this Disbursement Request constitutes the approval of the Owner of each disbursement hereby requested and authorized.

Dated: _____

Authorized Representative of
Owner

Approved in accordance with the Agreement:

Columbus-Franklin County Finance Authority,
as the Finance Authority:

By: _____

Name: _____

Title: _____

Dated: _____

SCHEDULE 1 TO DISBURSEMENT REQUEST FORM

Payee	Amount	Purpose

EXHIBIT D

FORM OF COMPLETION CERTIFICATE

DLZ Corporation (the **Owner**) hereby certifies that the Project, as such term is defined in the Energy Project Cooperative Agreement entered into by and between the Owner, the Columbus Regional Energy Special Improvement District, Inc., and the Columbus-Franklin County Finance Authority (the **Finance Authority**) dated as of [____], 2023 (the **Agreement**) has been completed at 6121 Huntley Road, Columbus, Ohio 43229 (the **Property**) in strict compliance with the requirements of the Agreement.

Note: Capitalized terms used but not defined in this Completion Certificate have the meaning assigned to them in the Agreement to which a form of this Completion Certificate is attached and of which it forms a part.

THE OWNER HEREBY CERTIFIES:

- (a) That the acquisition, construction, equipping, installation, and improvement of the Project was substantially completed on _____;
- (b) That all other facilities necessary in connection with the Project have been acquired or are otherwise available to the Owner;
- (c) That the acquisition, construction, equipping, installation, and improvement of the Project and those other facilities have been accomplished in such a manner as to conform with all applicable zoning, planning, building, environmental, and other similar governmental regulations;
- (d) That except as provided in clause (e) below, all costs of that acquisition, construction, equipping, installation, and improving then or theretofore due and payable have been paid; and
- (e) The amounts, if any, the Finance Authority shall retain in the Project Account for the payment of costs not yet due or for liabilities that the Owner is contesting or which otherwise should be retained and the reasons such amounts should be retained.

[Balance of Page Intentionally Left Blank]

NOTICE: DO NOT SIGN THIS COMPLETION CERTIFICATE UNLESS YOU AGREE TO EACH OF THE ABOVE STATEMENTS.

DLZ Corporation, as the Owner

By: _____
Name: _____
Title: _____

EXHIBIT E

CLOSING COSTS DETAIL

Pursuant to Section 4.2 of the foregoing Energy Project Cooperative Agreement, the Finance Authority shall disburse to the respective payee set forth below, the following closing costs:

Lender and ESID Counsel Fee (Bricker)	\$	15,000.00
Financial Advisor Fee (DiPerna Advisors)		7,500.00
Finance Authority Fee		7,500.00
ESID Fee		3,937.43
Trustee Fee (Huntington)		1,500.00
Miscellaneous		500.00
Total Cost of Issuance	2.231%	\$ 35,937.43

EXHIBIT F
CONSENT OF MORTGAGEE

[See Attached]

EXHIBIT G

[RESERVED]

EXHIBIT H

FINANCE AUTHORITY ACCOUNT AND PAYMENT INFORMATION

[To Be Provided Separately in the Following Format]

Bank Name: [BANK NAME]
[BANK ADDRESS]

ABA: [NUMBER]
Beneficiary Name
[Address]
[Address]
Beneficiary Account: [NUMBER]

Reference: [NUMBER]

Contact: [Information]

If sending by check, please make checks payable to: [NAME/REFERENCE] and mail to:

[BANK NAME]
[ADDRESS]
[ADDRESS]
Attention: [NAME]

EXHIBIT I
FORM OF OWNER CONSENT

OWNER CONSENT
(Affidavit of Facts Relating to Title Made Pursuant to O.R.C. §5301.252)

The undersigned, [____], having been duly cautioned and sworn, deposes and states as follows:

The undersigned is the [____] of DLZ Corporation, a Delaware corporation (the “Owner”).

This Owner Consent, dated as of [____], 2023 is given by the Owner pursuant to the Energy Project Cooperative Agreement dated as of [____], 2023 (the “Agreement”) by and among the City of Worthington, Ohio (the “City”), the Bexley, Columbus, Dublin, Gahanna, Grandview Heights, Grove City, Hilliard, Marble Cliff, Perry Township, Sharon Township, Upper Arlington, Whitehall, Worthington Regional Energy Special Improvement District, Inc., d/b/a the Columbus Regional Energy Special Improvement District, Inc. (the “District”), the Columbus-Franklin County Finance Authority (together with its permitted successors and assigns under the Agreement, the “Finance Authority”), and the Owner. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

The “Assessed Lands” consists of the real property described in Exhibit 1 to this Owner Consent, and the Special Assessments are disclosed on Schedule 1 to this Owner Consent.

As described in the Agreement, the Owner, as the owner of the of the Assessed Lands on the date of submission of the Petition for Special Assessments for Special Energy Improvement Projects and Affidavit (the “Petition”), submitted the Petition, together with the Columbus Regional Energy Special Improvement District Program Plan Supplement to Plan for 6121 Huntley Road, Worthington, Ohio Project (the “Supplemental Plan”) to the City Manager and City Council of the City. By the Petition and the Supplemental Plan, the Owner requested that the City (1) approve certain special energy improvement projects, as that term is defined in Ohio Revised Code Section 1710.01, to be implemented by the Owner on the Assessed Lands, and (2) levy special assessments up to the amounts set forth in the Supplemental Plan (the “Special

Assessments”) on the Assessed Lands in order to finance the costs of the special energy improvements projects described in the Plan.

The Owner covenants and agrees that so long as the Project Advance remains outstanding, except as the covenant may be released by the District, the City and the Investor, as applicable, in writing, the certain covenants with respect to the billing, payment, collection, and transfer of the Special Assessments set forth in Section 2.2 of the Agreement shall be covenants on and running with, and shall be binding upon, the Assessed Lands, the Owner, and all future owners of the Assessed Lands. Any release, modification or waiver of the covenants running with the land by the District, the City, or the Investor, as applicable, shall be filed of record with the Franklin County, Ohio Recorder’s Office. The Owner agrees that this Owner Consent shall be recorded with the Franklin County, Ohio Recorder’s Office and the Owner covenants and agrees to record such documents and to take such reasonable steps as are necessary, so that the covenants with respect to the billing, payment, collection, and transfer of the Special Assessments are covenants on and running with the Assessed Lands and are binding on the Owner and any and all future owners of all or any portion of the Assessed Lands. The Owner agrees that it shall not, without the prior written consent of the Investor, seek or enter into a delinquent tax contract or tax lien sale agreement with the County under Chapter 323, Chapter 5721, or any other applicable provision of the Revised Code to preclude the commencement, continuation, or resolution of foreclosure proceedings, or to otherwise delay in the timely payment in full of any and all taxes, special assessments, or other items included for collection on the property tax bill.

The Owner acknowledges that pursuant to the Section 3.4(a) and Section 6.7 of the Agreement at such time as the Owner enters into any written agreement providing for or relating to the transfer, sale, or conveyance of any of its right, title, or interest in or to the Property or the Project, the Owner shall immediately provide written notice to the Finance Authority, the ESID, and the City. The Owner shall prepay the Project Advance to the Finance Authority as set forth in Section 4.6 of this Agreement prior to the transfer, sale, or conveyance of the Property or the Project. Notwithstanding the foregoing, the foregoing restrictions shall not apply to the grant or conveyance of any leasehold interests, mortgage interest, or lien interest, except as may be otherwise provided in this Agreement. Before or simultaneous with any such transfer or conveyance, the Owner shall pay all reasonable legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel.

The Owner acknowledges that the Special Assessments have been levied by the City and certified to the County Auditor for placement on the tax list and duplicate and will be collected with and in the same manner as real property taxes as special assessments binding against the Assessed Lands in each of the years disclosed in the schedule of Special Assessments attached to this Owner Consent as Exhibit 2. Unless earlier paid by the Owner or any successor in interest of the Owner to the Assessed Lands, the Special Assessments shall be levied, billed, due and payable, and collected in each of the years in each of the amounts disclosed on Exhibit 2.

Anything in this Owner Consent to the contrary notwithstanding, this Owner Consent shall in no way be construed as a waiver by the Owner of its statutory right of redemption, including the full applicable redemption period.

(Signature Page Immediately Follows)

Further affiant sayeth naught.

“OWNER”

DLZ CORPORATION

By: _____

Name: _____

Title: _____

STATE OF _____)

)

SS:

COUNTY OF _____)

)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named DLZ CORPORATION by _____, its _____, who acknowledged that they did sign the foregoing instrument and that the same is such officer's free act and deed as such officer and of said limited liability company.

The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____
day of _____, 2023.

Notary Public

[Seal]

This instrument was prepared by:
J. Caleb Bell, Esq.
Bricker Graydon LLP
100 South Third Street
Columbus, Ohio 43215

EXHIBIT 1
DESCRIPTION OF ASSESSED LANDS

The Assessed Lands subject to this Owner Consent are located at the commonly used mailing address of 6121 Huntley Road, Columbus, Ohio 43299, with Franklin County Auditor Parcel ID No. 100-002248-00 and the following legal description:

Being in Section No. 3, Lot No. 6 and 7, Township 2 North, Range 18 West, United States Military Lands and being all of the lands conveyed to RENNOB, Inc. by deeds of record in Deed Book 3133, page 90 (1.0 acre tract), Deed Book 3133, page 93, (1.92 acre tract) and Deed Book 3463, page 561, (3.213 acre tract), all references being to the Recorder's Office, Franklin County, Ohio, and being more particularly described as follows:

Beginning at an iron pin (1" solid re-bar) found in the easterly right-of-way line of the Consolidated Rail Corporation property (formerly C.C.C. & St. Louis Railroad), also in the northwest corner of a 1.49 acre tract of land now or formerly owned by Mahlon Maxton Chevrolet, Inc. by deed of record in Deed Book 2838, page 593; said iron pin located North 3° 11' 09" West a distance of 480.81 feet from the centerline of State Route 161, Station 564+10.99 (O.D.O.T. R/W Plans FRA-161-10.76), this point being 50 feet easterly of the centerline of the main track of said Consolidated Rail Corporation;

Thence, North 3° 11' 09" West with the easterly right-of-way line of said Consolidated Rail Corporation a distance of 272.55 feet to an iron pipe (3/4" I.D.) found in the southwest corner of a 13.489 acre tract of land now or formerly owned by Donald R. Kenney, Trustee by deed of record in Official Record No. 13266, H-03;

Thence, South 87° 09' 27" East along the southerly line of said 13.489 acre Kenney tract a distance of 690.08 feet to an iron pipe (3/4" I.D.) found;

Thence, South 87° 12' 57" East continuing with the southerly line of said Kenney tract a distance of 212.90 feet to iron pipe (3/4" I.D.) found in northwest corner of a 0.04 acre tract of land conveyed to the City of Worthington by Case No. 86CV-07-4153 in the Court of Common Pleas of Franklin County, Ohio, of record in Official Record No. 08743, B-05;

Thence, South 2° 37' 40" West along the westerly line of said 0.04 acre City of Worthington tract a distance of 175.03 feet to an iron pipe (3/4" I.D.) set;

Thence, South 87° 22' 20" East with the southerly line of said 0.04 acre City of Worthington tract a distance of 10.00 feet to an iron pipe (3/4" I.D.) set in the westerly right-of-way line of Huntley Road (old) (60' R/W);

Thence, South 2° 37' 40" West with the westerly right-of-way line of said Huntley Road (old) a distance of 201.03 feet to an iron pipe (3/4" I.D.) set in the northeast corner of a 0.662 acre tract of land now or formerly owned by Dodson-Lindblom Associates by deed of record in Official Record No. 08808, P-12;

Thence, North 87° 19' 01" West with the north line of said 0.662 acre tract and with the northerly line of a 0.623 acre tract of land now or formerly owned by Rick's Car Wash Properties

Co. by deed of record in Official Record No. 07683, 1-10 a distance of 222.85 feet to an iron pipe (3/4" I.D.) found in the northwest corner of said 0.623 acre Rick's Car Wash tract, said pipe also being in the easterly line of a 4.75 acre tract of land now or formerly owned by Mahlon Maxton Chevrolet, Inc. by deed of record in Deed Book 3454, page 915;

Thence, North 2° 41' 45" East with the easterly line of said 4.75 acre Mahlon tract and also the easterly line of a 0.52 acre tract of land now or formerly owned by Mahlon Maxton Chevrolet, Inc. by deed of record in Deed Book 2838, page 588, a distance of 104.64 feet to an iron pin (1" solid) found in the northeast corner of said 0.52 acre Maxton tract;

Thence, 87° 05' 36" West with the northerly line of said 0.52 acre Mahlon tract and also the said 1.49 acre Mahlon Maxton Chevrolet tract a distance of 662.65 feet to the point of beginning.

It is understood that the tract of land described above contains 6.0984 acres, more or less, being subject to all legal highways and easements of record.

Bearings are based upon the easterly right-of-way line of Consolidated Rail Corporation, being North 3° 11' 09" West, of record in Deed Book 3483, page 562, Recorder's Office, Franklin County, Ohio.

EXHIBIT 2
SCHEDULE OF SPECIAL ASSESSMENTS

Special Assessment Payment Date ¹	Special Assessment Installment Amount ²
First Half 2025	\$72,252.50
Second Half 2025	72,252.50
First Half 2026	72,252.50
Second Half 2026	72,252.50
First Half 2027	72,252.50
Second Half 2027	72,252.50
First Half 2028	72,252.50
Second Half 2028	72,252.50
First Half 2029	72,252.50
Second Half 2029	72,252.50
First Half 2030	72,252.50
Second Half 2030	72,252.50
First Half 2031	72,252.50
Second Half 2031	72,252.50
First Half 2032	72,252.50
Second Half 2032	72,252.50
First Half 2033	72,252.50
Second Half 2033	72,252.50
First Half 2034	72,252.50
Second Half 2034	72,252.50
First Half 2035	72,252.50
Second Half 2035	72,252.50
First Half 2036	72,252.50
Second Half 2036	72,252.50
First Half 2037	72,252.50
Second Half 2037	72,252.50
First Half 2038	72,252.50
Second Half 2038	72,252.50
First Half 2039	72,252.50
Second Half 2039	72,252.50
First Half 2040	72,252.50
Second Half 2040	72,252.50
First Half 2041	72,252.50
Second Half 2041	72,252.50
First Half 2042	72,252.50
Second Half 2042	72,252.50
First Half 2043	72,252.50
Second Half 2043	72,252.50

* Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates for first-half and second-half real property taxes identified in this Exhibit 2 are determined by statute and a variety of circumstances and are subject to adjustment by the Franklin County Auditor under certain conditions.

** Pursuant to Ohio Revised Code Section 727.36, the Franklin County Auditor may charge and collect a fee in addition to the amounts listed in this Exhibit 2.



Quick Facts

All Funds

<u>07/31/2023</u>	<u>07/31/2023</u>
<u>Cash Balances</u>	<u>Unencumbered</u>
\$56,390,890	Balance
(January 1, 2023 balance: \$47,524,866)	\$28,385,061

General Fund

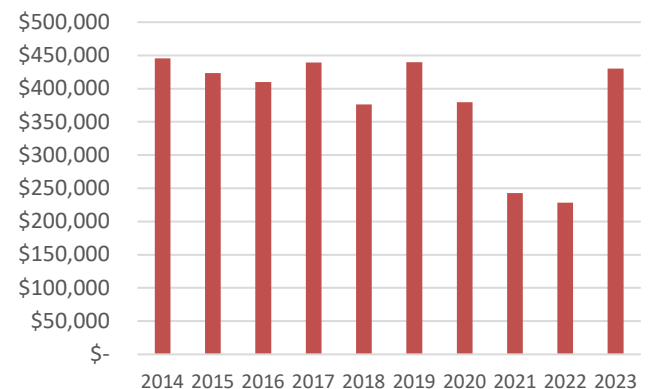
<u>07/31/2023</u>	<u>07/31/2023</u>
<u>Cash Balance</u>	<u>Unencumbered</u>
\$22,774,897	Balance
(January 1, 2023 balance: \$23,512,622)	\$16,237,781
	(50% of prior year expenditures)

Highlights & Trends for July 2023

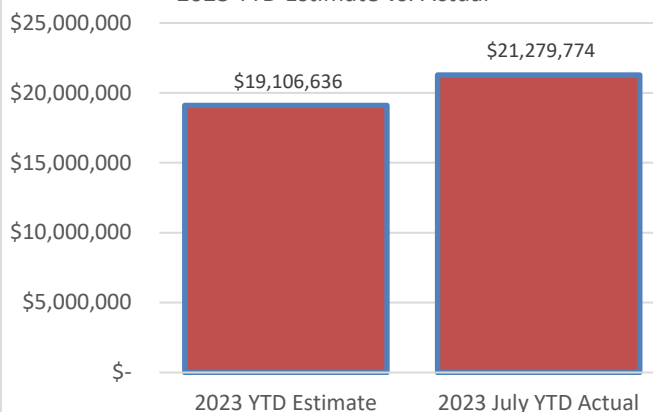
Income Tax Collections

- Year to Date (YTD) income tax collections are above 2022 YTD income tax collections \$239,950 or 1.24%.
- YTD Income tax collections are above estimates by \$991,424 or 5.35%
- Year to date refunds total \$429,999

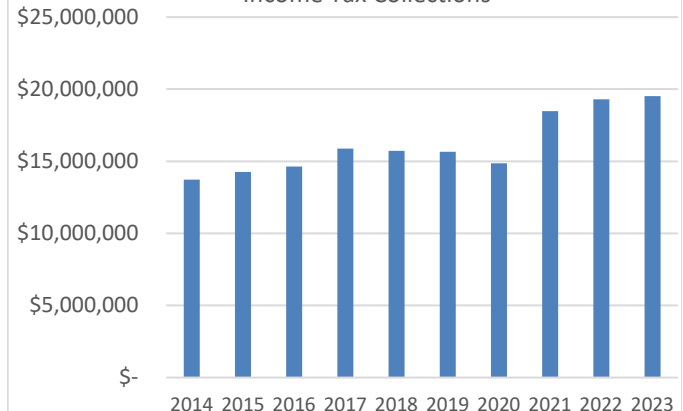
Income Tax Refunds as of July



General Fund Revenue 2023 YTD Estimate vs. Actual

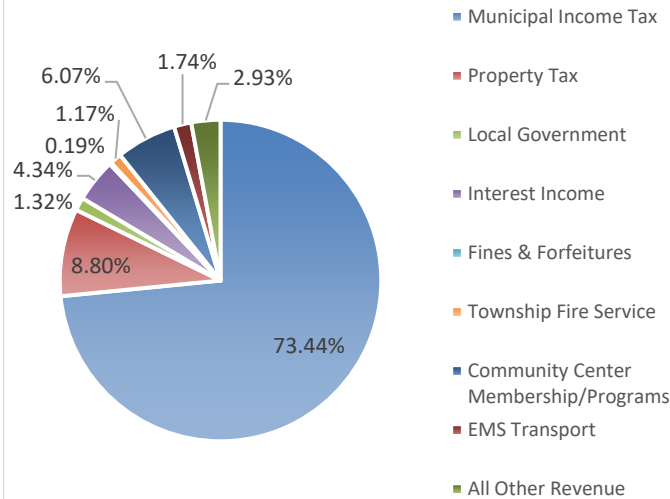


July Year to Date Income Tax Collections

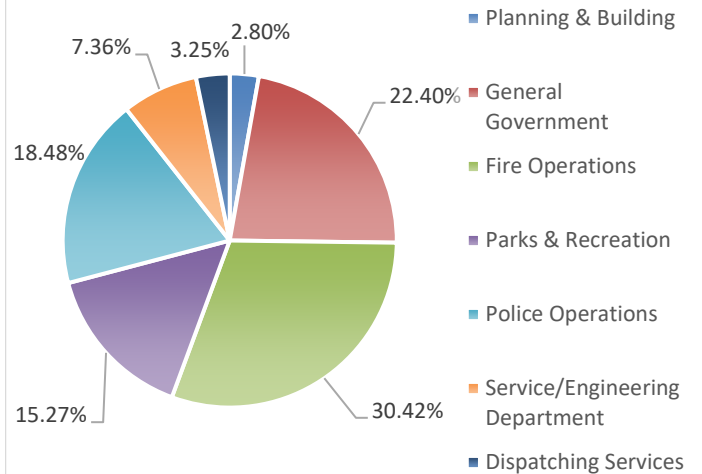


Highlights & Trends for July 2023 (continued)

**July 2023 Year to Date
General Fund Revenue**



**July 2023 Year to Date
General Fund Expenses**



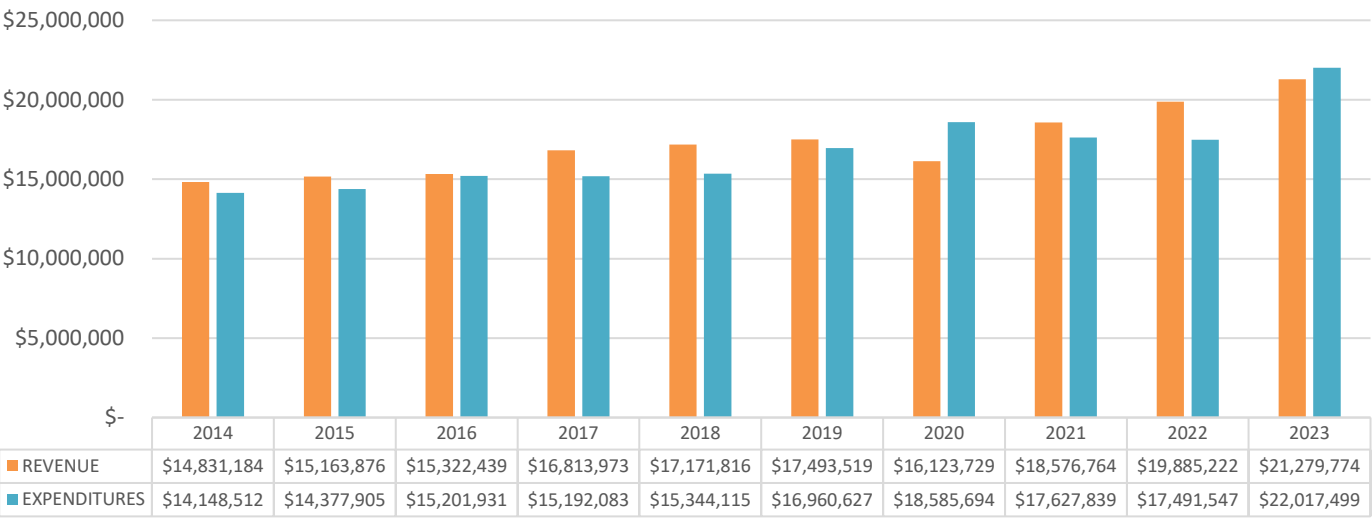
Notable Initiatives & Activities

- In April 2023, we transferred \$2.5M from the General Fund to the Capital Fund to hold as an encumbrance for the purchase of a new ladder truck and engine in the Division of Fire.
- In May 2023, the City closed on \$4,400,000 in bonds to fund McCord Park Phase 2 and Sewer Lining & Repair. The all-inclusive rate was 3.77%.



Financial Tracking

July Year to Date
General Fund
Cash Position





July 2023 Cash Reconciliation

Total Fund Balances: \$56,390,889.96

Depository Balances:

General Account: \$ 8,837,759.16

Total Bank Balances: \$8,837,759.16

Investment Accounts:

Huntington Investment: \$13,052,000.00

Star Ohio/Star Plus 26,143,893.76

Fifth Third MMKT/CDs 8,107,712.04

FC Bank 248,000.00

Total Investment Accounts: \$47,551,605.80

Petty Cash/Change Fund: 1,525

Total Treasury Balance as of July 31, 2023 \$56,390,889.96

Total Interest Earnings as of July 31, 2023 \$923,592.38

Debt Statement

<u>Issuance</u>	<u>Purpose</u>	<u>Maturity</u>	<u>Rate</u>	<u>Principal Balance</u>
2017	2017 Various Purpose Bonds	December 2032	2.21%	\$ 2,570,000
2008	OPWC 0% Loan – ADA Ramps	December 2028	0%	\$ 46,860.30
2015	OPWC 0% Loan – Kenyonbrook	December 2045	0%	\$ 469,825.56
2021	2021 Various Purpose Bonds	December 2041	1.65%	\$ 9,565,000.00
2023	2023 Various Purpose Bonds	December 2043	3.77%	\$ 4,400,000.00
	Total Principal Debt Balance			\$17,051,685.86



**City of Worthington
Fund Summary Report
as of July 31, 2023**

		<u>1/1/2023 Beginning</u>	<u>Year to Date</u>	<u>Year to Date</u>			<u>Unencumbered</u>
<u>FUND</u>		<u>Balance</u>	<u>Actual Revenue</u>	<u>Actual Expenses</u>	<u>7/31/2023</u>	<u>Encumbrances</u>	<u>Balance</u>
101	General Fund	\$ 23,512,622	\$ 21,279,774	\$ 22,017,499	\$ 22,774,897	\$ 6,537,116	\$ 16,237,781
202	Street M&R	334,238	528,300	537,238	325,300	66,974	\$ 258,326
203	State Highway	93,581	42,835	53,646	82,771	442	\$ 82,329
204	Water	95,416	25,071	39,636	80,851	59,762	\$ 21,089
205	Sewer	63,526	23,785	61,318	25,993	8,768	\$ 17,225
210	Convention & Visitor's Bureau F	4,407	69,427	69,859	3,975	1,467	\$ 2,508
211	27th Pay Fund	50,000	50,000	-	100,000	-	\$ 100,000
212	Police Pension	1,004,283	894,766	402,321	1,496,728	-	\$ 1,496,728
214	Law Enforcement Trust	17,503	13	-	17,516	10,000	\$ 7,516
215	Municipal MV License Tax	32,083	71,697	-	103,780	-	\$ 103,780
216	Enforcement/Education	53,624	450	-	54,074	-	\$ 54,074
217	Community Technology	-	-	-	-	-	\$ -
218	Court Clerk Computer	190,503	3,336	4,962	188,877	7,516	\$ 181,361
219	Economic Development	536,647	300,000	105,840	730,807	153,095	\$ 577,712
220	FEMA Grant	-	-	-	-	-	\$ -
221	Law Enf CED	18,030	-	-	18,030	-	\$ 18,030
222	Coronavirus Relief Fund	-	-	-	-	-	\$ -
223	Coronavirus ARPA Recovery Fu	-	-	-	-	-	\$ -
224	Parks & Rec Revolving	-	-	-	-	-	\$ -
225	Ohio Opioid Settlement Fund	7,086	22,345	-	29,431	-	\$ 29,431
229	Special Parks	50,584	21,995	2,235	70,345	20,814	\$ 49,531
230	Sharon Twp JEDD	37,237	56,936	89,477	4,696	-	\$ 4,696
253	2003 Bicentennial	76,385	-	-	76,385	-	\$ 76,385
306	Trunk Sewer	375,149	-	-	375,149	-	\$ 375,149
308	Capital Improvements	15,856,659	11,002,554	4,064,211	22,795,002	18,454,582	\$ 4,340,420
313	County Permissive Tax	-	-	-	-	-	\$ -
409	General Bond Retirement	1,858,758	1,522,081	297,005	3,083,834	868,842	\$ 2,214,992
410	Special Assessment Bond	278,448	-	-	278,448	-	\$ 278,448
825	Accrued Acreage Benefit	8,066	3,044	-	11,110	17,849	\$ (6,739)
830	OBBS	1,935	4,979	5,186	1,728	447	\$ 1,282
835	Unclaimed Funds	70,141	-	-	70,141	-	\$ 70,141
838	Petty Cash	1,525	-	-	1,525	-	\$ 1,525
910	Worthington Sta TIF	37,541	-	-	37,541	-	\$ 37,541
920	Worthington Place (The Heights	1,666,207	102,193	21,231	1,747,169	1,553,459	\$ 193,710
930	933 High St. MPI TIF Fund	228,573	74,809	8,325	295,057	64,000	\$ 231,057
935	Downtown Worthington MPI TIF	508,410	281,554	23,017	766,947	126,697	\$ 640,250
940	Worthington Square TIF	135,969	24,520	277	160,213	54,000	\$ 106,213
945	W Dublin Granville Rd. MPI TIF	257,607	65,972	744	322,835	-	\$ 322,835
950	350 W. Wilson Bridge	35,830	53,940	40,609	49,161	-	\$ 49,161
955	800 Proprietors Road TIF	26,293	22,016	248	48,061	-	\$ 48,061
998	Payroll Clearing Fund	-	6,269,738	6,107,225	162,513	-	\$ 162,513
999	PACE Fund	-	16,488	16,488	-	-	\$ -
Total All Funds		\$ 47,524,866	\$ 42,834,620	\$ 33,968,596	\$ 56,390,890	\$ 28,005,829	\$ 28,385,061



City of Worthington, Ohio
General Fund Overview
as of July 31, 2023

		2022	2023	2023	2023	2023	2023	Variance			
		Year End	Original	Revised	Y-T-D	July	Variance	as % of			
Revenues		Actual	Budget	Budget	Estimates	Y-T-D Actual	Over/(Under)	Budget			
Municipal Income Tax	1	\$ 26,558,839	\$ 23,656,000	\$ 23,656,000	\$ 14,831,838	\$ 15,627,740	\$ 795,902	5.37%			
Property Tax	2	3,444,123	3,526,617	\$ 3,526,617	1,763,309	1,873,557	\$ 110,249	6.25%			
Local Government	*	474,137	450,000	\$ 450,000	262,500	280,883	\$ 18,383	7.00%			
Interest Income	*	394,819	200,000	\$ 200,000	116,667	923,592	\$ 806,926	691.65%			
Fines & Forfeitures	*	52,939	75,000	\$ 75,000	43,750	39,489	\$ (4,261)	-9.74%			
Township Fire Service	2	465,519	500,000	\$ 500,000	250,000	249,422	\$ (578)	-0.23%			
Community Center Membership/Progr	*	1,591,015	1,600,000	\$ 1,600,000	933,333	1,291,737	\$ 358,403	38.40%			
EMS Transport	*	580,669	675,000	\$ 675,000	393,750	370,871	\$ (22,879)	-5.81%			
All Other Revenue	*	2,644,950	1,015,470	\$ 1,015,470	511,489	622,482	\$ 110,993	21.70%			
Total Revenues		\$ 36,207,010	\$ 31,698,087	\$ 31,698,087	\$ 19,106,636	\$ 21,279,774	\$ 2,173,138	11.37%			
Expenditures											
Planning & Building		\$ 811,823	\$ 1,164,041	\$ 1,164,041	\$ 679,024	\$ 591,234	\$ (87,790)	87.07%			
General Government		9,588,318	8,456,177	\$ 8,527,177	\$ 4,921,963	4,723,609	\$ (198,354)	95.97%			
Fire Operations		6,886,792	7,795,214	\$ 10,295,214	\$ 6,005,542	6,414,057	\$ 408,516	106.80%			
Parks & Recreation		5,051,119	6,006,544	\$ 6,006,544	\$ 3,503,817	3,219,489	\$ (284,328)	91.89%			
Police Operations		6,057,145	7,112,096	\$ 7,148,096	\$ 4,169,723	3,897,114	\$ (272,609)	93.46%			
Service/Engineering Department		2,575,346	3,348,775	\$ 3,348,775	\$ 1,953,452	1,552,375	\$ (401,077)	79.47%			
Dispatching Services		752,799	686,000	\$ 686,000	\$ 686,000	685,205	\$ (795)	99.88%			
Total Expenditures		\$ 31,723,342	\$ 34,568,847	\$ 37,175,847	\$ 21,919,520	\$ 21,083,084	\$ (836,436)	96.18%			
Excess of Revenues Over (Under) Expenditures		\$ 4,483,668	\$ (2,870,760)	\$ (5,477,760)	\$ (2,812,884)	\$ 196,690					
Fund Balance at Beginning of Year		\$ 19,524,896	\$ 23,512,622	\$ 23,512,622		\$ 23,512,622					
Unexpended Appropriations			1,209,910	1,209,910		-			1 - Income Tax budget based on individual monthly projections.		
Expenditures versus Prior Year Enc		495,941	2,039,099	2,039,099		934,415			2 - These revenue budgets are based on semi-annual payments.		
									* - All other revenue budgets are spread equally over each month.		
General Fund Balance		\$ 23,512,622	\$ 19,812,673	\$ 17,205,673		\$ 22,774,897					
									All expenditure budgets are spread equally over each month.		



Quick Facts

All Funds

<u>08/31/2023</u>	<u>08/31/2023</u>
<u>Cash Balances</u>	<u>Unencumbered</u>
\$59,149,608	Balance
(January 1, 2023 balance: \$47,524,866)	\$32,997,544

General Fund

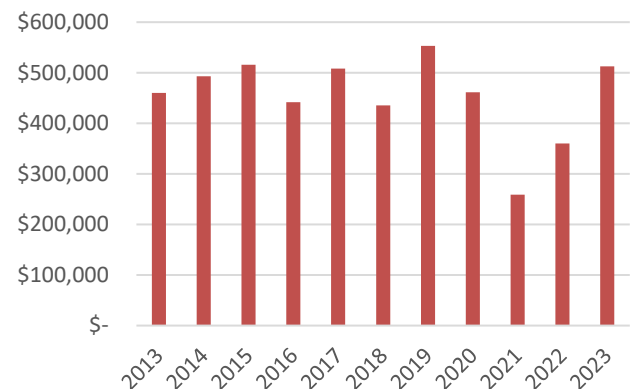
<u>08/31/2023</u>	<u>08/31/2023</u>
<u>Cash Balance</u>	<u>Unencumbered</u>
\$25,360,318	Balance
(January 1, 2023 balance: \$23,512,622)	\$19,374,806
	(60% of prior year expenditures)

Highlights & Trends for August 2023

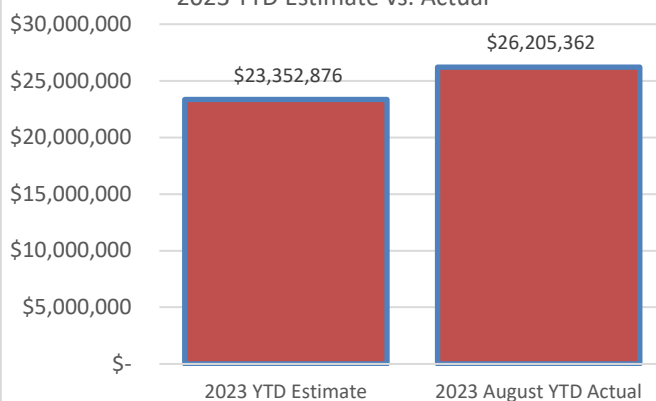
Income Tax Collections

- Year to Date (YTD) income tax collections are above 2022 YTD income tax collections \$298,661 or 1.31%.
- YTD Income tax collections are above estimates by \$1,833,167 or 8.62%
- Year to date refunds total \$512,429

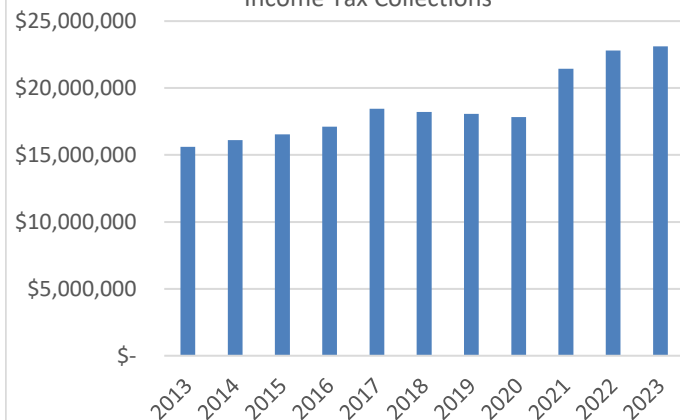
Income Tax Refunds as of August



General Fund Revenue 2023 YTD Estimate vs. Actual



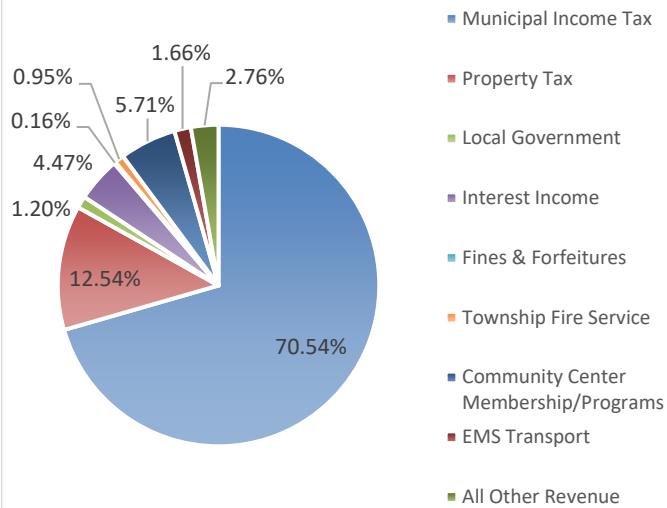
August Year to Date Income Tax Collections



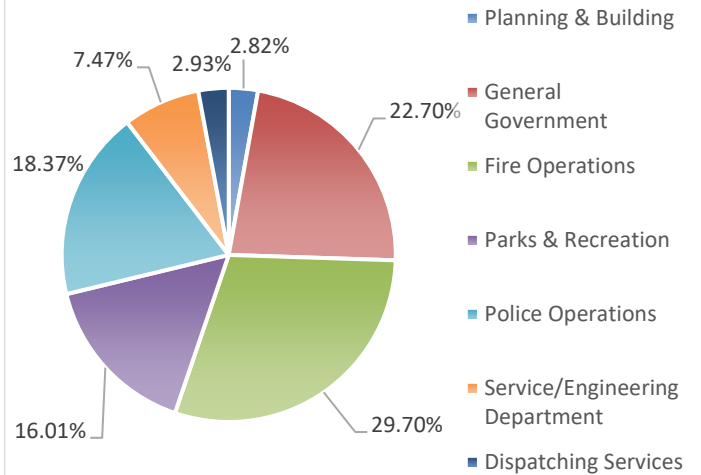


Highlights & Trends for August 2023 (continued)

August 2023 Year to Date
General Fund Revenue



August 2023 Year to Date
General Fund Expenses



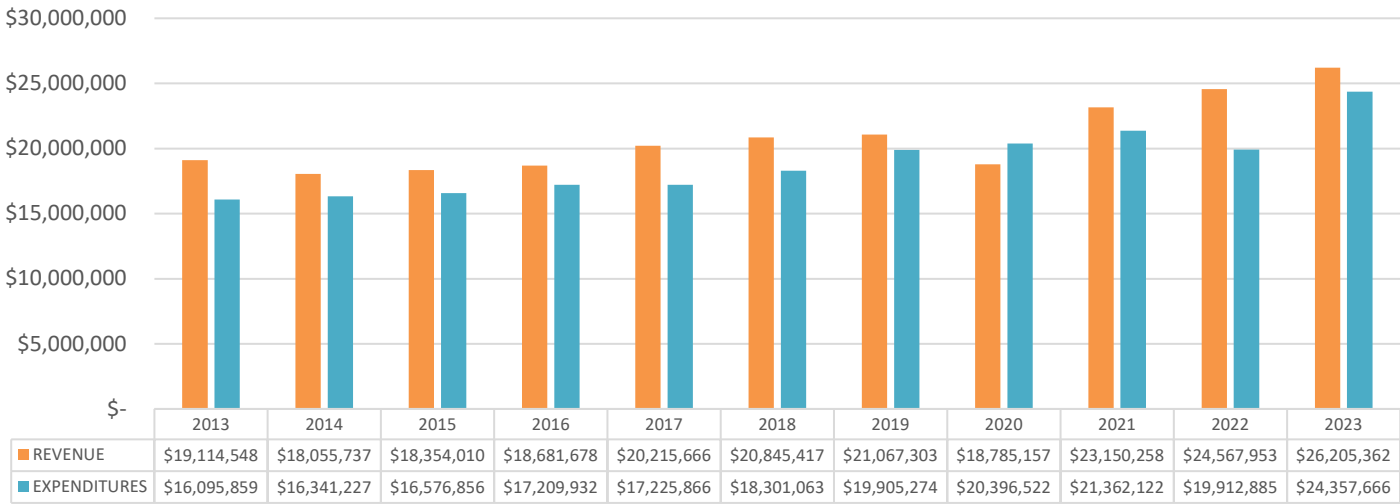
Notable Initiatives & Activities

- In April 2023, we transferred \$2.5M from the General Fund to the Capital Fund to hold as an encumbrance for the purchase of a new ladder truck and engine in the Division of Fire.
- In May 2023, the City closed on \$4,400,000 in bonds to fund McCord Park Phase 2 and Sewer Lining & Repair. The all-inclusive rate was 3.77%.
- Second half property tax distribution was received in August 2023.



Financial Tracking

August Year to Date
General Fund
Cash Position





August 2023 Cash Reconciliation

Total Fund Balances: \$59,149,607.89

Depository Balances:

General Account: \$ 11,426,281.10

Total Bank Balances: \$11,426,281.10

Investment Accounts:

Huntington Investment: \$13,052,000.00

Star Ohio/Star Plus 26,265,518.92

Fifth Third MMKT/CDs 8,156,282.87

FC Bank 248,000.00

Total Investment Accounts: \$47,721,801.79

Petty Cash/Change Fund: 1,525

Total Treasury Balance as of August 31, 2023 \$59,149,607.89

Total Interest Earnings as of August 31, 2023 \$1,170,592.11

Debt Statement

<u>Issuance</u>	<u>Purpose</u>	<u>Maturity</u>	<u>Rate</u>	<u>Principal Balance</u>
2017	2017 Various Purpose Bonds	December 2032	2.21%	\$ 2,570,000
2008	OPWC 0% Loan – ADA Ramps	December 2028	0%	\$ 46,860.30
2015	OPWC 0% Loan – Kenyonbrook	December 2045	0%	\$ 469,825.56
2021	2021 Various Purpose Bonds	December 2041	1.65%	\$ 9,565,000.00
2023	2023 Various Purpose Bonds	December 2043	3.77%	\$ 4,400,000.00
	Total Principal Debt Balance			\$17,051,685.86



**City of Worthington
Fund Summary Report
as of August 31, 2023**

		<u>1/1/2023 Beginning</u>	<u>Year to Date</u>	<u>Year to Date</u>			<u>Unencumbered</u>
<u>FUND</u>		<u>Balance</u>	<u>Actual Revenue</u>	<u>Actual Expenses</u>	<u>8/31/2023</u>	<u>Encumbrances</u>	<u>Balance</u>
101	General Fund	\$ 23,512,622	\$ 26,205,362	\$ 24,357,666	\$ 25,360,318	\$ 5,985,511	\$ 19,374,806
202	Street M&R	334,238	608,365	602,448	340,155	53,110	\$ 287,045
203	State Highway	93,581	49,327	60,580	82,328	294	\$ 82,034
204	Water	95,416	25,171	42,416	78,171	56,982	\$ 21,189
205	Sewer	63,526	23,935	62,063	25,398	8,022	\$ 17,375
210	Convention & Visitor's Bureau F	4,407	69,940	71,982	2,365	1,851	\$ 514
211	27th Pay Fund	50,000	50,000	-	100,000	-	\$ 100,000
212	Police Pension	1,004,283	988,382	458,610	1,534,054	-	\$ 1,534,054
214	Law Enforcement Trust	17,503	13	8,011	9,505	1,989	\$ 7,516
215	Municipal MV License Tax	32,083	81,706	-	113,789	-	\$ 113,789
216	Enforcement/Education	53,624	475	-	54,099	-	\$ 54,099
217	Community Technology	-	-	-	-	-	\$ -
218	Court Clerk Computer	190,503	3,630	4,962	189,171	10,516	\$ 178,655
219	Economic Development	536,647	300,000	126,096	710,551	132,838	\$ 577,712
220	FEMA Grant	-	-	-	-	-	\$ -
221	Law Enf CED	18,030	-	-	18,030	-	\$ 18,030
222	Coronavirus Relief Fund	-	-	-	-	-	\$ -
223	Coronavirus ARPA Recovery Fu	-	-	-	-	-	\$ -
224	Parks & Rec Revolving	-	-	-	-	-	\$ -
225	Ohio Opioid Settlement Fund	7,086	29,857	-	36,943	-	\$ 36,943
229	Special Parks	50,584	36,995	2,456	85,124	20,593	\$ 64,531
230	Sharon Twp JEDD	37,237	64,895	89,716	12,416	-	\$ 12,416
253	2003 Bicentennial	76,385	-	-	76,385	-	\$ 76,385
306	Trunk Sewer	375,149	-	-	375,149	-	\$ 375,149
308	Capital Improvements	15,856,659	11,717,162	5,418,251	22,155,571	17,202,028	\$ 4,953,543
313	County Permissive Tax	-	-	-	-	-	\$ -
409	General Bond Retirement	1,858,758	1,575,130	297,005	3,136,883	868,842	\$ 2,268,041
410	Special Assessment Bond	278,448	-	-	278,448	-	\$ 278,448
825	Accrued Acreage Benefit	8,066	3,044	-	11,110	11,110	\$ -
830	OBBS	1,935	5,377	5,414	1,899	219	\$ 1,679
835	Unclaimed Funds	70,141	-	-	70,141	-	\$ 70,141
838	Petty Cash	1,525	-	-	1,525	-	\$ 1,525
910	Worthington Sta TIF	37,541	-	-	37,541	-	\$ 37,541
920	Worthington Place (The Heights	1,666,207	514,792	108,462	2,072,536	1,553,459	\$ 519,077
930	933 High St. MPI TIF Fund	228,573	102,437	9,395	321,615	64,000	\$ 257,615
935	Downtown Worthington MPI TIF	508,410	528,124	39,502	997,032	126,697	\$ 870,336
940	Worthington Square TIF	135,969	40,839	461	176,348	54,000	\$ 122,348
945	W Dublin Granville Rd. MPI TIF	257,607	131,944	1,490	388,061	-	\$ 388,061
950	350 W. Wilson Bridge	35,830	107,879	41,218	102,491	-	\$ 102,491
955	800 Proprietors Road TIF	26,293	44,032	497	69,828	-	\$ 69,828
998	Payroll Clearing Fund	-	7,472,642	7,348,014	124,628	-	\$ 124,628
999	PACE Fund	-	32,977	32,977	-	-	\$ -
Total All Funds		\$ 47,524,866	\$ 50,814,433	\$ 39,189,691	\$ 59,149,608	\$ 26,152,064	\$ 32,997,544



**City of Worthington, Ohio
General Fund Overview
as of August 31, 2023**

		2022	2023	2023	2023	2023	2023	Variance			
		Year End	Original	Revised	Y-T-D	August	Variance	as % of			
Revenues		Actual	Budget	Budget	Estimates	Y-T-D Actual	Over/(Under)	Budget			
Municipal Income Tax	1	\$ 26,558,839	\$ 23,656,000	\$ 23,656,000	\$ 17,016,877	\$ 18,486,173	\$ 1,469,296	8.63%			
Property Tax	2	3,444,123	3,526,617	\$ 3,526,617	3,526,617	3,286,973	\$ (239,645)	-6.80%			
Local Government	*	474,137	450,000	\$ 450,000	300,000	314,762	\$ 14,762	4.92%			
Interest Income	*	394,819	200,000	\$ 200,000	133,333	1,170,592	\$ 1,037,259	777.94%			
Fines & Forfeitures	*	52,939	75,000	\$ 75,000	50,000	42,882	\$ (7,118)	-14.24%			
Township Fire Service	2	465,519	500,000	\$ 500,000	250,000	249,422	\$ (578)	-0.23%			
Community Center Membership/Progr	*	1,591,015	1,600,000	\$ 1,600,000	1,066,667	1,495,706	\$ 429,040	40.22%			
EMS Transport	*	580,669	675,000	\$ 675,000	450,000	435,413	\$ (14,587)	-3.24%			
All Other Revenue	*	2,644,950	1,015,470	\$ 1,015,470	559,382	723,438	\$ 164,055	29.33%			
Total Revenues		\$ 36,207,010	\$ 31,698,087	\$ 31,698,087	\$ 23,352,876	\$ 26,205,362	\$ 2,852,485	12.21%			
Expenditures											
Planning & Building		\$ 811,823	\$ 1,164,041	\$ 1,164,041	\$ 776,027	\$ 660,183	\$ (115,844)	85.07%			
General Government		9,588,318	8,456,177	\$ 8,527,177	\$ 5,587,035	5,309,160	\$ (277,874)	95.03%			
Fire Operations		6,886,792	7,795,214	\$ 10,295,214	\$ 6,863,476	6,948,068	\$ 84,592	101.23%			
Parks & Recreation		5,051,119	6,006,544	\$ 6,006,544	\$ 4,004,363	3,745,060	\$ (259,303)	93.52%			
Police Operations		6,057,145	7,112,096	\$ 7,148,096	\$ 4,765,397	4,296,583	\$ (468,814)	90.16%			
Service/Engineering Department		2,575,346	3,348,775	\$ 3,348,775	\$ 2,232,517	1,748,606	\$ (483,911)	78.32%			
Dispatching Services		752,799	686,000	\$ 686,000	\$ 686,000	685,205	\$ (795)	99.88%			
Total Expenditures		\$ 31,723,342	\$ 34,568,847	\$ 37,175,847	\$ 24,914,815	\$ 23,392,864	\$ (1,521,950)	93.89%			
Excess of Revenues Over (Under) Expenditures		\$ 4,483,668	\$ (2,870,760)	\$ (5,477,760)	\$ (1,561,938)	\$ 2,812,497					
Fund Balance at Beginning of Year		\$ 19,524,896	\$ 23,512,622	\$ 23,512,622		\$ 23,512,622					
Unexpended Appropriations			1,209,910	1,209,910		-			1 - Income Tax budget based on individual monthly projections.		
Expenditures versus Prior Year Enc		495,941	2,039,099	2,039,099		964,802			2 - These revenue budgets are based on semi-annual payments.		
									* - All other revenue budgets are spread equally over each month.		
General Fund Balance		\$ 23,512,622	\$ 19,812,673	\$ 17,205,673		\$ 25,360,318					



STAFF MEMORANDUM
City Council Meeting – September 11, 2023

Date: September 6, 2023

To: Robyn Stewart, Acting City Manager

From: Darren Hurley, Parks & Recreation Director

Subject: **Age Friendly Initiative Update**

EXECUTIVE SUMMARY

City Council will be briefed on the Age Friendly Action Plan process and next steps in implementation.

RECOMMENDATION

This is an update only; no action is requested at this time.

BACKGROUND/DESCRIPTION

Since joining AARP's Network of Age Friendly Communities in December 2019, the Age-Friendly Worthington Steering Committee has had the goal of creating an Action Plan and formally launch the Age-Friendly initiative. This committee of resident volunteers, partnering organizations, city staff and stakeholders conducted an initial community survey, held focus groups and gathered data, in preparation for the Action Plan development.

In March 2023, the City of Worthington entered a contract with a consulting firm, The Center for Community Solutions, to assist in the development of the Age-Friendly Worthington Action Plan. Alongside the steering committee, consultants Emily Muttillio and Suzanna Thiese, have studied the data from the survey and focus groups and worked hard to identify opportunities to enhance the age-friendliness of Worthington. They helped organize and conduct community listening sessions, engage with service providers and stakeholders and lead us through a prioritization process for the plan.

One of the expectations of the plan, was to consider the 8 Domains of Livability provided by AARP, as well as the Visioning statements outlined by Vision Worthington. In doing so, 4 Age-Friendly Community Values or areas of focus were identified.

- Restoring and Strengthening Connections
- Remaining in Home/Community
- Information Gathering and Sharing
- Intergenerational Community Building

Each of the strategies we presented to the public in the open houses, were classified into one of those values and are being prioritized by importance to the community and feasibility. As we have gone through the prioritization process, some of the strategies identified have a high feasibility potential, while others will require additional resources and leadership.

We look to update council on the process we've gone through with CCS, give some examples of the strategies that have been identified and provide council the opportunity to give feedback before the plan is completed. The next steps will be to bring a final plan back to council and the community, identify needed resources to implement the plan and determine when implementation of the strategies can begin.



STAFF MEMORANDUM
City Council Meeting – September 11, 2023

Date: September 11, 2023

To: City Council

From: Robyn Stewart, Acting City Manager

Subject: WORTHINGTON POOLS – STATUS UPDATE

EXECUTIVE SUMMARY

An update will be provided regarding the request from Swiminc for financial support of capital improvements at the outdoor pools.

BACKGROUND/DESCRIPTION

Worthington Pools is comprised of the outdoor pools and natatorium on the grounds of Thomas Worthington High School. Worthington Pools is run by Swiminc, Inc. which is a 501(c)3 private, nonprofit organization that incorporated in 1953. Swiminc was established for the purpose of operating the facilities and directing the programs of Worthington Pools. It is run by a volunteer Board of Directors and has a property lease and facility use agreements with Worthington Schools.

Swiminc reports the need for major renovation or replacement of the outdoor pools and the natatorium. The organization is seeking a solution to the infrastructure needs associated with the outdoor pools and has requested the City provide funding for the capital investment. They have presented three options with varying levels of repair, renovation, and replacement. The costs associated with the options range from \$10,300,000 to \$15,400,000.

City Council held a series of conversations regarding this request last spring and summer. During the last conversation, which occurred in July, City Council indicated a desire to survey the community to gather input from residents within the city limits and within the broader school district. Staff solicited proposals from survey firms and selected Fallon Research & Communications. Fallon is in the process of developing the survey. It will focus on awareness about the current condition of the pool, interest in or the importance of new investment in the facility, and views on renovation as compared to replacement.

Once the survey is conducted, staff anticipates additional conversations with City Council this fall about the survey results, financial strategy options, and impacts related to City provision of funding. If City Council decides to provide the funding, staff will be prepared to discuss requirements and procedural steps related to the funding.



STAFF MEMORANDUM
City Council Meeting – September 11, 2023

Date: September 11, 2023

To: City Council

From: Robyn Stewart, Acting City Manager

Subject: VISION IMPLEMENTATION TEAMS – STATUS UPDATE

EXECUTIVE SUMMARY

Time is provided to discuss the current status and next steps for the Vision Implementation Teams

BACKGROUND/DESCRIPTION

On May 15, 2023, City Council passed Resolution No. 34-2023 creating seven Vision Implementation Teams and appointing the leadership of the teams. The Resolution indicated the teams were “to assist the Council in implementing the vision statements through the inventory of actions already being pursued, the evaluation of action ideas suggested during the visioning process, the engagement of the people knowledgeable about the subject area to prepare recommendation to be shared with the public for feedback and to identify and recommend two to three actions that Council could choose to pursue to achieve the vision.”

On June 21st, a kickoff training session was held with the co-chairs and staff members assigned to each of the teams. During this session, a process was outlined that the teams could follow to complete the responsibilities as outlined in the Resolution. The recommended process involved the following steps:

1. Review of current actions and initiatives
2. Brainstorming of new action items
3. Narrowing of the list of action items to 3-5
4. Getting public feedback on the 3-5 items
5. Finalizing 2-3 items to recommend to City Council

The teams have been meeting over the summer and most have reached step 3. Staff is collecting the lists and descriptions of the three to five items and will be consolidating them for public feedback. Staff is working with Jane Dockery, the consultant who helped map out the process and is providing support as needed during the process, to refine the public engagement steps. We are recommending two public engagement options - an online survey

and an in-person open house. The survey and the open house will have options for the public to engage with any or all of the vision areas to provide feedback. This engagement will occur once we have the information from the teams on their items.



STAFF MEMORANDUM
City Council Meeting – September 11, 2023

Date: September 7, 2023

To: Robyn Stewart, Acting City Manager

From: Tom Lindsey, Law Director

Subject: Pay to Stay Update

EXECUTIVE SUMMARY

Staff will provide an update on Pay to Stay Legislation.

RECOMMENDATION

Staff requests Council direction on the desired approach moving forward.

BACKGROUND/DESCRIPTION

In July 2022, Carlie Boos of the Affordable Housing Alliance of Central Ohio spoke to Council requesting Council to consider adopting “Pay to Stay” legislation. Currently under Ohio law, a landlord is able to evict a tenant even if they are able to pay the full rent as long as it occurs after the due date. “Pay to Stay” legislation allows renters to present the full past due rent and reasonable late fees to obtain the dismissal of an eviction action.

In April 2023, staff provided Council a comprehensive research memo providing additional information regarding “Pay to Stay” legislation adopted by other Ohio communities and details concerning eviction actions filed in Franklin County Municipal Court.

In June 2023, staff provided Council the results of public engagement regarding possible Pay to Stay legislation. Staff also informed Council that the City of Columbus had held a public hearing on the subject but had not finalized their legislation. Council directed staff to bring the issue back to Council for further discussion after the August recess.

The City of Columbus passed Pay to Stay legislation in August. A copy of their legislation is attached. If Council desires to pass Pay to Stay legislation, staff is recommending that the previous draft ordinance be revised based on the Columbus legislation to provide consistency for tenants, landlords, and the courts. The revised ordinance could be prepared for introduction on September 18th and public hearing on October 2nd.

ATTACHMENTS

- Research Memo – Pay to Stay (April 2023)
- Ordinance – Pay to Stay - Draft (April 2023)
- Staff Memo – Pay to Stay Update (June 2023)
- Columbus Pay to Stay legislation



MEMORANDUM

TO: Robyn Stewart, Acting City Manager

FROM: Ethan Charles Barnhardt, Management Assistant/Special Projects Coordinator

DATE: April 6, 2023

SUBJECT: Pay to Stay Background and Proposed Framework for Adoption

Throughout Central Ohio, housing issues have been top of mind for many communities, including consideration of policies that address equity and availability. This memorandum is meant to provide a comprehensive background on Pay to Stay legislation, which is a policy approach to help keep tenants in stable housing as well as make sure that landlords are paid what is owed to them. Currently, under Ohio law a landlord has no legal responsibility to accept a late payment from a tenant. Ohio is currently **one of only five states** where a single missed payment can lead to a tenant being evicted even if the tenant can tender the full amount of rent and other fees. This legislation would work to standardize and codify an existing defense currently used in response to eviction actions.

What Is Pay to Stay Legislation?

Pay to Stay legislation provides protections so that landlords are not able to evict a tenant for being just a day or two late on rent. Currently under Ohio law, a landlord is able to evict a tenant even if they are able to pay the full rent as long as it occurs after the due date. This allows a landlord to be able to reject late rent from tenants who may be vulnerable due to circumstances that are out of their control, such as illness and resulting lost wages. With the implementation of Pay to Stay ordinances, a renter may present the full rent due and reasonable late fees to obtain dismissal of an eviction action.

Ordinances have been passed in many locations across the state of Ohio, particularly in the northeastern part of the state where Cleveland and Akron have been joined by the suburbs of Lakewood, Cleveland Heights, Euclid, Newburgh Heights, and Maple Heights. Additionally, Cincinnati, Yellow Springs, Dayton, and Toledo have passed legislation containing Pay to Stay

components. Currently, Reynoldsburg and Gahanna are the only communities in Central Ohio that have adopted legislation that incorporates Pay to Stay provisions.

Why is Pay to Stay Legislation Needed?

Landlords in Ohio are able to issue a notice to leave and begin the eviction process for a tenant if that person is a day late, or a dollar short, on their rent payment. Even if a renter offers to pay the missed rent the day after it becomes late, the landlord can choose whether or not to accept the late payment. Adoption of a local ordinance that requires landlords to accept a late payment made in full, with applicable late fees and costs, would permit renters to defend against an eviction filing.

Pay to Stay legislation provides protection for renters to maintain housing stability and to curb the burdens on the social safety net. Additionally, with the cost of rent rapidly growing in the region due to increased demand and low supply, along with limited tenant protections, there appears to be the potential for some landlords to evict a late paying tenant in order to bring in someone who is willing to pay a higher market-rate rent.

What Does the Eviction Process Look Like?¹

- A Notice to Leave the Premises (“Three-Day Notice”) is left on the tenant’s door or personally delivered that includes the language:
 - *“You are being asked to leave the premises. If you do not leave, an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance.”*
- At this point, a tenant has three days to attempt to find a solution to avoid court, including:
 - Negotiating a payment of back rent
 - Resolution of other, non-payment related issues that has led to the notice
 - Coming to an agreed-upon move-out date with the landlord
- If a resolution cannot be made, the landlord can then file an eviction case in court
 - The tenant will be sent a summons by the court with the date, time, and location of the eviction hearing, which is usually in about two weeks.
 - The landlord may also sue for back rent, utilities, or other damages.
- The parties then prepare for the eviction hearing
 - Tenant can enlist a lawyer to help fight an eviction action.
- At the eviction hearing, the Court can then decide whether the tenant should be evicted or not.
 - If the tenant has already moved out, or if a resolution has been negotiated with the landlord, a dismissal can be requested
 - A tenant may also ask for a continuance if additional time is needed to help with the eviction case.

¹ *Eviction timeline in Ohio*. Ohio Legal Help. (2022, August 1). Retrieved August 25, 2022, from <https://www.ohiolegalhelp.org/eviction-timeline>

- If a court decides to evict, a Writ of Restitution is issued and a “Red Tag” will be posted on the door, telling the tenant how long they have to vacate the property, typically five days.
 - After that, a landlord can ask for the sheriff to come and set out the tenant’s belongings.

Eviction Statistics for Worthington

Evictions have a number of costs to both renters and landlords. Evictions for non-payment of rent can lead to economic instability, educational impairments for children displaced by evictions, and increased costs to the homeless system. Landlords also may incur court costs, attorney fees, and costs associated with tenant turnover.

Staff pulled records from the Franklin County Municipal Court between August 2021 through August 2022, to analyze data for Worthington rental properties where eviction actions were initiated and a notice to leave premises was issued.

Takeaways from the data include:

- During this time frame, 23 eviction actions were initiated in Worthington proper.
 - 22 were multi-family units
 - One was a commercial-use property
 - Zero were single-family
- Of those actions, **seven resulted in a judge issuing a Writ of Restitution**, ordering the tenant to vacate the property.
- **Four of the seven** evictions were attributable to the late payment of rent.
- The other three evictions were due to unsanitary conditions of the rental properties and criminal activity taking place on premises.
- When looking at the number of days given between rent being due and a notice to leave being issued, and accounting for outliers, landlords give tenants approximately **12 days** on average before issuing a notice and beginning the eviction process.
- Of the eviction actions taken within Worthington, there is an average court cost of approximately **\$150**.

What About Worthington Landlords?

The potential Passage of Pay to Stay legislation would bring Worthington’s laws in line with what is common for tenants and landlords nationwide. Pay to Stay would codify and standardize an existing affirmative defense to eviction action. Additionally, it could provide greater stability for renters who are given the opportunity to pay any late rent along with applicable costs and fees.

While there have been some concerns expressed by apartment and realtor associations across the state, overall, there has been little pushback. In Cincinnati, there was close cooperation with the

Greater Cincinnati Northern Kentucky Apartment Association to pass their legislation.³ The Akron Cleveland Association of Realtors noted that Pay to Stay, “...on the surface...appears to be a win-win situation for all involved. The housing provider receives owed rent and presumably avoids a vacancy, and the tenant remains in the home.”⁴ Their concerns mainly centered around whether the legislation was a valid exercise of home rule authority, and how amounts for fees and costs were determined.

Proposed Legislation

The proposed ordinance provides that a tenant may tender the full amount of rent owed, reasonable late fees, and court costs during an eviction proceeding and prior to judgment to maintain the tenancy and have the eviction proceeding dismissed. As a result, courts will be required to dismiss an action if the affirmative defense is proven. Notably, the late fees required to obtain dismissal of the action must be reasonable, as determined by the court.

The proposed ordinance does not include language preventing the filing of an eviction action due to questions of constitutionality in light of R.C. Chapter 1923. This proposed ordinance is modeled after the Pay to Stay components of several Ohio cities’ ordinances. Further, the proposed ordinance is not retroactive so that it does not interfere with pre-existing contracts entered into without knowledge of the impact of this legislation.

Proposed Framework for Community Engagement and Adoption of Legislation

Below is a proposed framework and timeline for adopting Pay to Stay legislation:

- April 2023
 - Distribute staff memorandum providing background research to and share draft ordinance with City Council
 - Staff presentation for April 10, 2023, Committee of the Whole meeting on background research, proposed legislative timeline, and next steps.
- April through May 2023
 - Build website informational page to provide background information and engagement opportunities.
 - Send letter to Worthington landlords, informing them of proposed Pay to Stay legislation and opportunities for engagement.
 - Create a form on the website for landlords & residents to submit questions and/or concerns.
- Mid-to-Late May 2023

³ Hart, J. (2022, July 19). *Hamilton County tenants facing eviction can use 'pay-to-stay' as a new legal protection*. WCPO. Retrieved August 25, 2022, from <https://www.wcpo.com/news/local-news/hamilton-county/cincinnati/hamilton-county-tenants-facing-eviction-can-use-pay-to-stay-as-a-new-legal-protection>

⁴ City of South Euclid, Ohio Legislative Meeting Packet – March 8, 2021. Retrieved August 25, 2022, from <https://www.cityofsoutheuclid.com/wp-content/uploads/2021/03/03-08-21-Legislative-Committee.pdf>

- Hold Q&A session of staff for interested landlords, tenants, and other community members to learn and ask questions about Pay to Stay
 - Incorporate feedback into draft ordinance and prepare for Council introduction
- June 2023
 - Come back to Council with legislation for introduction and passage.

To Enact New Chapter 727 “Residential Tenant’s Right to Pay to Stay” of the Codified Ordinances of the City of Worthington to Codify an Affirmative Defense in an Eviction Matter for Tenants who attempt to Tender All Past Due Rental Payments

WHEREAS, on May 20, 2019, City Council adopted Ordinance No. 14-2019 to enact Chapter 539 of the Codified Ordinances to prohibit discriminatory practices in housing, employment, and public accommodations based on race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status; and,

WHEREAS, on July 19, 2021, City Council adopted Ordinance No. 32-2021 to amend Chapter 539 “Discriminatory Practices, Civil Rights, Disclosure” of the Codified Ordinances of the City of Worthington to Prohibit Discrimination in the Rental or Leasing of Housing Accommodations Based on Source of Income; and,

WHEREAS, the State of Ohio is one of only five states in the country that permits a residential landlord to file for eviction immediately upon non-payment of rent and after providing proper notice; and

WHEREAS, unlike mortgage companies, residential landlords are allowed to refuse all future rent payments and commence eviction proceedings even if a tenant immediately recognizes the deficiency of payment and is able and willing to correct it; and

WHEREAS, evictions for non-payment of rent lead to regional vulnerabilities that prolong economic instability, create educational impairments for children displaced by evictions, increase costs to the homeless system, and negatively impact community stability and relationships; and

WHEREAS, the City Council seeks to decrease the number of evictions by allowing tenants to cure a non-payment of rent by tendering the full amount owed, including reasonable late fees and court costs, during an eviction proceeding to avoid eviction; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That Part Seven of the Codified Ordinances of the City of Worthington, “Business Regulation Code,” be and the same is hereby amended to add new Chapter 727:

CHAPTER 727

Residential Tenant's Right to Pay to Stay

727.01 DEFINITIONS

As used in this chapter:

- (a) "Residential Tenant" means a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others.
- (b) "Tender" means an offer of payment, or the provision of a voucher from an accredited social service, nonprofit, governmental, or quasi-governmental agency that guarantees the payment of any and all past due rent, reasonable late fees, and court costs.
 - (1) Such tender shall be made to the landlord in any lawful form agreed upon by the landlord, any form provided for by state or local law, or any form approved of by a court with jurisdiction over the eviction action.
 - (2) Where a tenant provides payment to a landlord in the form of a cashier's check, money order, certified check, or cash in an amount which covers all past due rent, reasonable late fees, and court costs, such payment shall also constitute "tender" for purposes of this section.

727.02 TENANT'S RIGHT TO PAY TO STAY

- (a) After the filing of an action for forcible entry and detainer under Ohio Revised Code Chapter 1923 for nonpayment of rent but prior to judgment, the Residential Tenant shall have the right to pay the Landlord all past due rent, reasonable late fees, and court costs incurred by the Landlord, for the purpose of maintaining the tenancy.
 - (1) If the Residential Tenant, or an agency or individual on the tenant's behalf, tenders all past due rent with reasonable late fees and costs to the Landlord prior to the judgment and the Landlord refuses the tender, the Residential Tenant's tender of all past due rent, reasonable late fees, and court costs shall be an affirmative defense to the eviction action filed by the Landlord against the Residential Tenant for nonpayment of rent.
 - (2) Payment of reasonable late fees and court costs shall only be required if the parties have a written lease agreement that explicitly

provides for such fees and costs and, further, Landlord shall set forth the amount of such fees and costs in the notice required by Section 1923.04 of the Ohio Revised Code.

- (b) Limitation of Affirmative Defense: The affirmative defense provided by this Section to the Residential Tenant shall be the exclusive remedy for any violation by the Landlord of this Section. If the Residential Tenant successfully utilizes this affirmative defense, the Residential Tenant shall be prohibited from utilizing the same or similar defense within the twelve months following the tender of payment required to establish such defense. Nothing in this Section shall limit the rights of a Residential Tenant to raise other affirmative defenses more than once during any twelve-month period.
- (c) The provisions of this Section apply to all leases entered into after the effective date of this ordinance.
- (d) This Section in no way limits the ability of a Landlord to seek judgment or the execution of a writ of restitution for forcible entry and detainer under Ohio Revised Code Chapter 1923 for reasons other than solely for non-payment of rent.

SECTION 2. That notice of passage of this Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed _____

President of Council

Attest:

Clerk of Council

Introduced:
P.H.:
Effective:



STAFF MEMORANDUM
City Council Meeting – June 12, 2023

Date: June 8, 2023

To: Robyn Stewart, Acting City Manager

From: Ethan Barnhardt, Management Assistant/Special Projects Coordinator

Subject: Pay to Stay Update

EXECUTIVE SUMMARY

Staff will provide an update on public engagement efforts around draft Pay to Stay Legislation and potential options for how best to move forward with this policy.

RECOMMENDATION

Staff requests Council input and direction on the desired approach moving forward.

BACKGROUND/DESCRIPTION

HISTORY

On April 10, 2023, staff provided a comprehensive overview of “Pay to Stay” legislation, which would allow renters to present the full rent due and reasonable late fees to obtain the dismissal of an eviction action. Currently under Ohio law, a landlord is able to evict a tenant even if they are able to pay the full rent as long as it occurs after the due date. This allows a landlord to be able to reject late rent from tenants.

City Council expressed general support for the legislation and supported the public engagement framework outlines by staff with steps to reach out to residents and Worthington landlords to seek their feedback, which City Council expressed their approval of. Letters were sent to approximately **230** Worthington landlords, with background information and different public engagement opportunities including an online survey and a Q&A session held on May 17, 2023.

FEEDBACK

The online form received nine submissions from different landlords expressing their perspectives on potential Pay to Stay legislation. Below is a summary of the results

from the survey:

- **Four** respondents were negative and questioned the need for this legislation and expressed that this eroded the rights of property owners.
- **Two** respondents expressed neutral opinions, specifically expressing that it is already standard practice for most landlords to accept reasonable late rent, or that there are already some protections in place under state law.
- **Three** respondents were positive, expressing their support for adopting Pay to Stay legislation.

Additionally, staff received several phone calls from landlords who expressed their concerns about this legislation, sharing similar concerns as what was heard from the online survey. Most comments revolved around the erosion on landlord property rights, and how the vast majority of landlords exhaust all options before having to resort to the eviction process, including accepting late payments of rent.

The online Q&A was conducted via Microsoft Teams with Law Director Tom Lindsey and Management Assistant Ethan Barnhardt serving to lead the session. There was one participant, who was a Worthington property owner, for the session and staff spent the entire hour answering their questions and listening to their concerns. The primary takeaways included questions about the number of complaints that the City has had regarding this particular problem, and that the legislation appeared to seem like it was solving a problem that may not exist within Worthington, as well as concerns about some of the terminology used in the draft legislation.

NEXT STEPS

Previously, staff had proposed bringing back legislation in June, however several discussions have influenced that thinking. From a legal perspective, there are some lingering concerns about the constitutionality of Pay to Stay, and it has not faced a legal challenge to consider it settled law at this point. Additionally, the City of Columbus has begun having conversations around adopting Pay to Stay legislation as part of their efforts around housing solutions. As a larger municipality, there may be benefits to seeing what their legislation looks like, and what their legal review looks like.

Staff sees three options for Council to consider on how to move forward:

1. Move forward as originally proposed, bringing back Pay to Stay legislation for consideration and potential adoption.
2. Table this policy until such time that the City of Columbus has made progress on their legislation to take into consideration the components of their legislation, and then bring it back for further discussion and consideration.
3. Table this policy until Pay to Stay has been established as settled law and there is greater certainty regarding the constitutionality of the legislation moving forward.



Legislation Details (With Text)

File #: 2109-2023 **Version:** 2

Type: Ordinance **Status:** Passed

File created: 7/6/2023 **In control:** Rules & Reference Committee

On agenda: 7/31/2023 **Final action:** 8/2/2023

Title: To amend Chapter 4551 of the Columbus City Codes to ensure that occupants in residential rental properties are afforded the right to assert tender of rent as an affirmative defense to an eviction action filed on the basis of nonpayment of rent.

Sponsors: Shayla Favor

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
8/2/2023	2	ACTING CITY CLERK	Attest	
8/2/2023	2	MAYOR	Signed	
7/31/2023	2	COUNCIL PRESIDENT	Signed	
7/31/2023	1	Columbus City Council	Amended as submitted to the Clerk	Pass
7/31/2023	1	Columbus City Council	Approved as Amended	Pass
7/24/2023	1	Columbus City Council	Read for the First Time	

Ohio is one of only five states that allows landlords to evict if a tenant pays rent just one day late or a dollar short. Given the many negative consequences to evicted tenants and the impact on public services, this ordinance would give tenants a reasonable chance to pay back their rent and remain in their homes. This legislation would standardize an existing defense to eviction action by allowing tenants to pay everything that is owed to avoid eviction. The landlord is made whole for all lost rent and expenses.

To amend Chapter 4551 of the Columbus City Codes to ensure that occupants in residential rental properties are afforded the right to assert tender of rent as an affirmative defense to an eviction action filed on the basis of nonpayment of rent.

WHEREAS, it is in the best interest of all parties to an eviction action that occupants are afforded the right to assert payment of rent as an affirmative defense to an eviction action filed on the basis of nonpayment of rent.; and

WHEREAS, current code does not require an operator to enter into pay to stay agreements; and

WHEREAS, there are currently millions of dollars in rental and utility assistance funds available for qualifying residential occupants and owners who have experienced financial hardship; and

WHEREAS, amending the city code to allow occupants the right to assert payment and remain housed would benefit the City of Columbus by allowing the occupant(s) to remain in safe and sanitary housing; **NOW, THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. That Chapter 4551 of The Columbus City Codes is hereby amended to read as follows:

4551.07 Tenant's Right to Assert Tender of Rent as an Affirmative Defense to Eviction

(a) Tenant's Affirmative Defense after Tendering Rent Prior to the Filing of an Eviction Action

(1) If a tenant, or an agency or individual on the tenant's behalf, tenders all past due rent with reasonable late fees to the landlord prior to the filing of an action under Ohio Revised Code Chapter 1923 and the landlord refuses to accept the payment tendered, the tenant's tender of all past due rent with reasonable late fees shall be an affirmative defense to any action filed by the landlord against the tenant for nonpayment of rent.

(2) If a rental agreement includes a provision that authorizes the landlord to assess the tenant a fee for late payment of the monthly rent, the total amount of that late payment fee from any month may not exceed the larger of: (A) fifty dollars (\$50.00); or (B) ten percent (10%) of the monthly contract rent.

(b) Tenant's Affirmative Defense after Tendering Rent Prior to an Eviction Judgement

(1) If a tenant, or an agency or individual on the tenant's behalf, tenders all past due rent with reasonable late fees and court costs to the landlord prior to a judgment and the landlord refuses to accept the payment tendered, the tenant's tender of all past due rent, reasonable late fees, and court costs shall be an affirmative defense to the eviction action filed by the landlord against the tenant for nonpayment of rent.

(2) If a rental agreement includes a provision that authorizes the landlord to assess the tenant a fee for late payment of the monthly rent, the total amount of that late payment fee from any month may not exceed the larger of: (A) fifty dollars (\$50.00); or (B) ten percent (10%) of the monthly contract rent.

(c) Effect upon other claims for eviction. A tenant's tender of payment pursuant to this section does not limit the ability of a landlord to initiate an eviction action for reasons other than solely for non-payment of rent.

SECTION 2. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.