

CITY OF OBERLIN, OHIO

ORDINANCE No. 21-84 AC CMS

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A SUBSTATION CONSTRUCTION AND TRANSFER AGREEMENT WITH BIO ENERGY (OHIO II), LLC (“BEO”) FOR THE PURPOSE OF THE CONSTRUCTION OF A NEW ELECTRIC SUBSTATION ON CITY-OWNED PROPERTY ON LORAIN COUNTY PERMANENT PARCEL NO. 0900078000032 ON HILL CREEK DRIVE AS AN EMERGENCY MEASURE

WHEREAS, the City of Oberlin owns and operates an electric distribution system and related facilities, including a 69 kV transmission loop;

WHEREAS, BEO will construct, own, and operate a facility at 520 Hill Creek Drive, located near the Lorain County Landfill, to collect, process, and treat gas produced from the Lorain County Landfill to produce renewable natural gas (RNG);

WHEREAS, BEO’s production facility will require certain quantities of electricity and in order to provide such electricity, a new three-breaker ring bus substation (the “Substation”) is required;

WHEREAS, the City of Oberlin desires for BEO to engineer and construct the Substation to establish a physical connection and custody transfer point between BEO’s production facility and the City’s existing 69 kV loop system;

WHEREAS, after the construction of the Substation is complete, BEO will transfer the Substation to the City at no cost and that thereafter the City will be responsible for ownership and operation of the Substation; and

WHEREAS, the proposed Facility will create environmental benefits to the City and region, increased fuel diversity and security, economic development and local revenue which are cited in the Oberlin 2019 Climate Action Plan.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, Lorain County, State of Ohio:

SECTION 1. That the City Manager is hereby authorized and directed to enter into a substation construction and transfer agreement with Bio Energy (Ohio II), LLC, a Delaware limited liability company, substantially in the form as attached hereto as **Exhibit A**.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this Ordinance were adopted 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 Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department, to wit: to facilitate the creation of economic and environmental benefits to the City of Oberlin and provided that it is elevated to emergency status by the affirmative vote of at least five members of Council and receives the affirmative vote of at


least five members of Council upon final passage, it shall go into full force and effect from and immediately after its passage; otherwise, it shall take effect on the earliest date allowed by law.

PASSED: 1st Reading: December 20, 2021
2nd Reading: _____
3rd Reading: _____

ATTEST:



BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL



LINDA SLOCUM
PRESIDENT OF COUNCIL

POSTED: 12/21/2021

EFFECTIVE DATE: 12/20/2021

SUBSTATION CONSTRUCTION AND TRANSFER AGREEMENT

This Substation Construction and Transfer Agreement (this "*Agreement*") is made and entered into as of February __, 2022 ("*Effective Date*"), by and between the City of Oberlin, Ohio ("*City*") and Bio Energy (Ohio II), LLC, a Delaware limited liability company ("*BEO*"). City and BEO are sometimes referred to herein singularly as a "*Party*," or jointly as the "*Parties*."

WITNESSETH:

WHEREAS, City owns and operates an electric distribution system and related facilities located in the State of Ohio, including a 69 kV transmission loop (the "*Existing System*");

WHEREAS, BEO will construct, own, and operate a facility, located near the Lorain Landfill located in Lorain County, Oberlin, Ohio (the "*Production Facility*"), to collect, process, and treat gas produced from the Lorain Landfill;

WHEREAS, BEO's Production Facility will require certain quantities of electricity and in order to provide such electricity, a new three breaker ring bus substation (the "*Substation*") is required;

WHEREAS, the Parties desire for BEO to construct the Substation to establish a physical connection and custody transfer point between the Production Facility and the Existing System;

WHEREAS, the Parties desire that after the construction of the Substation is complete, BEO will transfer the Substation to the City and that thereafter the City will be responsible for ownership and operation of the Substation; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the terms, conditions, and procedures regarding the foregoing.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the premises and the mutual covenants and agreements herein contained, the Parties agree as follows:

ARTICLE I **DEFINITIONS**

Capitalized terms used, but not otherwise defined in this Agreement, shall have their respective meanings set forth below:

- A. "*Bill of Sale and Assignment and Assumption Agreement*" means the Bill of Sale and Assignment and Assumption Agreement substantially in the form set forth in Exhibit "C".
- B. "*Commercial Operations Date*" means the date that the Substation is commissioned, tested, complete, operational, in service, and capable of delivering electricity from City's Existing System to BEO's Production Facility.

- C. **“Contractor”** means any and all contractors, constructors, materialmen, laborers, manufacturers, or vendors who perform or provide any portion of BEO’s obligations under this Agreement.
- D. **“Force Majeure”** means any cause which (i) prevents a Party from performing its obligations under this Agreement, (ii) is beyond the reasonable control of and not due to the fault or negligence of, the Party affected, and (iii) could not have been avoided by such Party's due diligence and use of all reasonable efforts. Subject to meeting the requirements in items (i) to (iii), Force Majeure shall include droughts, pandemics, epidemics, nationally documented floods, earthquakes, tornados, hurricanes, named storms directly affecting the site, fire, war, riot, terrorist attacks, civil disturbance, sabotage, and explosions.
- E. **“Government and Industry Standards”** has the meaning given in Article II.C.
- F. **“Permits”** means any and all permits, clearances, licenses, authorizations, registrations, notices, consents, filings, exemptions, or approvals from or required by any government authority that are necessary for the performance of a Party’s obligations under this Agreement, including ownership and/or operation of the Substation or any portion thereof.
- G. **“Production Facility”** has the meaning set forth in the Recitals.
- H. **“Property Rights”** has the meaning given in Article II(I).
- I. **“Substation”** means the materials, equipment, and facilities set forth on Exhibit “B” under the heading “Substation,” and all other associated equipment.
- J. **“Term”** has the meaning given in Article III.

ARTICLE II

OBLIGATIONS OF THE PARTIES

- A. **Responsibility; Contractors.**
 - (1) Subject to the terms, conditions, and provisions of this Agreement, BEO shall engineer, design, procure, construct, and install the Substation.
 - (2) Subject to the terms, conditions, and provisions of this Agreement, BEO shall have the right to have any of its engineering, design, procurement, construction, and installation obligations performed by a Contractor qualified to perform such work, which Contractor will be pre-approved by the City. All such work shall be reviewed by an electrical engineer selected by the City in accordance with the scope of work set forth in Exhibit “D”. BEO shall be responsible for all third party costs and expenses associated with the electrical engineer selected by the City. BEO will be solely liable for all acts, omissions, and liabilities of its Contractors and the performance and/or nonperformance of such Contractors. BEO shall cause all work performed or furnished by Contractors to be performed and furnished in accordance with the terms, conditions, and provisions of this Agreement. Nothing contained in any agreement between BEO and any Contractor shall create a contractual relationship between any Contractor and City or in any way diminish

or relieve BEO from any duties and obligations under this Agreement. No Contractor is intended to be or shall be deemed a third-party beneficiary of this Agreement.

- (3) Upon City's request, BEO shall provide City evidence of such Contractor's qualifications and of any licenses, permits, or registrations that pertain to the work.
- B. Location. BEO shall engineer, design, construct, and install the Substation on property owned by the City at a location depicted on Exhibit "A". The configuration of the Substation is more particularly depicted in Exhibit "B". Within ninety (90) days following the Commercial Operations Date, BEO shall furnish City with true and complete as-built drawings of the Substation.
- C. Performance Standards. BEO and City shall perform their respective obligations under this Agreement in accordance with all applicable federal, state, and local laws, rules, codes, regulations regarding safe and reliable operations (collectively, the "***Government and Industry Standards***"). In the event of any conflict between the terms, conditions, or provisions of this Agreement and Government and Industry Standards, a government-imposed standard shall prevail and control. In all other cases, the terms, conditions, and provisions of this Agreement shall prevail and control.
- D. Design Review; Documentation. BEO shall work collaboratively with the City and shall submit all engineering and design information and construction drawings for the Substation (as may be revised from time-to-time, collectively, the "***Plans***") to City in accordance with the timeline shown on Exhibit "D". Following receipt of the Plans, City shall have the number of days shown on Exhibit "D" to review and approve, disapprove, or request revision to the Plans. If City does not notify BEO in writing that the Plans have been approved, disapproved, or request revisions in the applicable period, the Plans will be deemed to be accepted by the City. If City disapproves of the Plans (or any portion thereof), City and BEO shall discuss the reasons for such disapproval and the possible modifications. BEO shall promptly make appropriate revisions to City's reasonable satisfaction. Upon request by City, BEO shall provide City with access to the following: (i) then-current copies of the Plans, including any amendments, modifications, or supplements thereto, (ii) as-built drawings and information, (iii) material specifications, and (iv) all other reasonably requested documentation related to the Substation or otherwise necessary to verify BEO's compliance with this Agreement.
- E. Permits. BEO shall obtain and maintain the Permits required for the construction of the Substation. City shall obtain and maintain the Permits required for ownership and operation of the Substation after the transfer thereof to City.
- F. Inspection. City may, at City's sole cost, risk, and expense, and upon reasonable written notice to BEO, conduct an inspection of the Substation to verify that the engineering, design, construction, and installation of the Substation is consistent with the requirements set forth in this Agreement; *provided, however*, such inspection right shall expire fourteen(14) days after BEO has completed construction of the Substation and City has received notice of same. BEO shall render all reasonable cooperation to City in the conduct of such inspection. Should City determine that any part of the Substation is not materially consistent with the Plans, City shall inform BEO in writing within five (5) business days after City's inspection as to the reasonable particulars of such alleged non-compliance and after confirming that the City is correct, BEO shall promptly make appropriate

revisions to City's reasonable satisfaction. Any inspection, comments, permission, review, revision, confirmation, approval, or acceptance given by City or any absence of an objection or disapproval by City shall not relieve BEO of its obligations for the proper performance of its obligations in accordance with the terms hereof or any liability or responsibility under or arising out of this Agreement, including the Government and Industry Standards.

- G. Construction Schedule Updates. BEO shall use commercially reasonable efforts to achieve the Commercial Operations Date as soon as practicable. BEO shall provide monthly updates to City regarding BEO's then-estimate of the expected timing and completion of the Substation and expected Commercial Operations Date.
- H. Transfer and Assignment. Promptly following the Commercial Operations Date, the Parties shall execute the Bill of Sale and Assignment and Assumption Agreement, in the form attached hereto as Exhibit "C", transferring the Substation to City and thereafter, City shall have the obligation to operate and maintain the Substation.
- I. Real Property Rights. City shall, at its sole cost and expense, obtain grants of all real property rights, including easements and rights-of-way over, across, and under real property burdened by or to be burdened by the Substation, with full rights of ingress and egress, in order for BEO and City to perform their respective obligations and effectuate the transactions contemplated under this Agreement (collectively, the "Property Rights"). City represents and warrants to BEO that the Property Rights are all of the property rights needed for BEO to construct the Substation, for the Substation to be connected to the Existing System, and for BEO to perform its obligations and effectuate the transactions contemplated under this Agreement.
- J. Performance of Work. The Parties shall perform their respective obligations under this Agreement in a manner that does not unreasonably interfere with the other Party's operations. Any work being performed under this Agreement by a Party, which, in the reasonable judgment of the other Party, endangers or could endanger life or the safety or protection of persons or property shall be suspended immediately upon verbal or written notice by such Party. The Party receiving such notice shall immediately take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage or loss.
- K. Warranty. BEO shall transfer any and all contractor and subcontractor warranties associated with the Substation to City in connection with the transfer of the Substation. If within the warranty period provided in the Contractor and subcontractor agreements, the Substation fails to meet the provisions of this Agreement, BEO shall use commercially reasonable efforts to assist City with any warranty claims.

ARTICLE III **TERM; TERMINATION**

- A. Term. This Agreement is effective on the Effective Date and shall continue in force and effect until the transfer of the Substation to City, *provided, however*, this Agreement may be earlier terminated in accordance with the terms and conditions of this Agreement (the "Term").

- B. Termination. This Agreement may be terminated upon forty-five (45) day prior written notice by BEO to City if BEO, in its sole and reasonable discretion, determines not to construct its Production Facility. In such case, BEO shall reimburse the City for the costs of the engineer incurred prior to the notice date and the costs of any equipment purchased by the City in anticipation of the construction of the Substation whereafter BEO will have no further obligations to City under this Agreement. The City shall transfer any such equipment to BEO upon payment.

ARTICLE V

INSURANCE REQUIREMENTS

- A. Each Party shall maintain, in full force and effect throughout the term of this Agreement, at its sole cost and expense, the insurance described below, with coverages and limits at levels customary in the industry for performing work, activities, operations and services similar to those to be performed as described in this Agreement but at levels not less than the minimums indicated.
1. Worker's Compensation insurance covering each of its operations and work being performed pursuant to this Agreement which shall apply to all of its employees and its affiliates, including borrowed servants, alternate and statutory employees, in accordance with the benefits afforded by the statutory Worker's Compensation Acts applicable to the state, territory or district of hire, supervision or place of accident; policy limits for worker's compensation shall not be less than statutory limits;
 2. Commercial General Liability insurance applicable to its operations under this Agreement including bodily injury, death, property damage, independent contractors, products/completed operations, and contractual, with a minimum limit of \$1 million per occurrence with a minimum \$2 million aggregate;
 3. Commercial/Business Automobile Liability insurance covering owned, hired, rented, and non-owned automotive equipment with a limit of \$1 million per accident; and
 4. Excess/Umbrella Liability coverage in excess of the terms and limits of insurance specified in Sections A 2, and 3 above with a combined limit of \$10 million per occurrence, inclusive of underlying and excess/umbrella coverage.
- B. All parties agree to carry underlying and excess/umbrella insurance in a combined single limit of \$10 million per occurrence.
- C. Material modification or cancellation of policies providing coverage hereunder, as it affects the interest of the opposite Party, shall only be effective thirty (30) days after written notice of modification or cancellation is received from the insurance company (or insurance broker representative) by the affected Party. Each Party shall name the other Party as additional insured under its and its Contractors' insurance policies. Prior to commencing work under this Agreement, the Parties shall deliver to each other copies of certificates of insurance evidencing the existence of insurance provided for above. Each Party agrees to provide the other Party with copies of annual renewal certificates evidencing the required coverages so long as this Agreement is in effect (and for this purpose, delivery of certificates shall be considered delivered to both City and BEO).

- D. Irrespective of the requirements as to insurance to be carried, the insolvency, bankruptcy, or failure of any such insurance company carrying insurance for a Party, or failure of any such insurance company to pay claims occurring shall not be held to waive any of the provisions of this Agreement. Each Party's interests as additional insureds will be provided under all policies required with the exception of the Worker's Compensation policy with respect to liability arising out of work performed hereunder. Any and all deductibles, self-insured retentions or retrospective premiums in the above-described insurance policies shall be assumed by, for the account of, and at the sole risk of the respective first named insured party.
- E. If a Party sub-contracts or the Parties, jointly or collectively, sub-contract any part of the work or services to be performed under this Agreement, the Party or Parties shall require each of its respective Contractors to maintain insurance substantially equivalent to the insurance required to be provided by the Parties herein, or, in such Party's reasonable discretion, such other insurance as that Party reasonably determines is necessary, taking into account the work involved and the risks related thereto. Any deficiencies in the insurance of said contractors or subcontractors shall be the sole responsibility of the hiring party. Upon request by a Party, the other Party shall have its contractors furnish the same evidence of insurance required of the Parties herein.

ARTICLE VI
INDEMNITY; LIMITATION OF LIABILITY

- A. **TO THE EXTENT PERMITTED BY LAW, BEO (THE "INDEMNIFYING PARTY") SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS (COLLECTIVELY "INDEMNIFICATION") THE CITY, ITS EMPLOYEES, ELECTED AND APPOINTED OFFICIALS, OFFICERS, AGENTS AND CONTRACTORS (COLLECTIVELY, THE "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITY, COSTS, AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S FEES AND COSTS OF DEFENSE) FOR (I) BODILY INJURY, SICKNESS, DISEASE OR DEATH; AND (II) DAMAGE, LOSS OR DESTRUCTION TO PROPERTY; IN EACH CASE TO THE EXTENT CAUSED BY THE (X) BREACH OF ANY OBLIGATION OR WARRANTY UNDER THIS AGREEMENT BY BEO, (Y) NEGLIGENT ACT OF BEO, OR (Z) OMISSION OR WILLFUL MISCONDUCT OF BEO.**
- B. **TO THE EXTENT THAT ANY CLAIM ARISES FROM THE CONCURRENT CONDUCT OF CITY, BEO, AND/OR ANY THIRD PARTY, IT IS EXPRESSLY AGREED THAT EACH PARTY SHALL ONLY BE LIABLE ONLY TO THE EXTENT OF SUCH PARTY'S PRO RATA SHARE OF LIABILITY.**
- C. For purposes hereof, "third party" shall mean a person or entity wholly unrelated to the Indemnified Party or any affiliate thereof, and shall not include any affiliate, subsidiary, holding, division, parent company, partner, insurer, successor or assignee of the Indemnified Party or any other person or entity under the control or acting in concert with the Indemnified Party, whether directly or indirectly.

- D. Each party reserves the right to employ counsel at its own expense and participate in the defense and/or settlement of any claim covered by this Article.
- E. In connection with this Article, the Indemnifying Party shall, within thirty (30) days of receipt of notice of any claim or threatened claim, notify the other party of its intention to assume the defense of such claim. If (i) the Indemnifying Party shall decline to assume the defense of any such claim; (ii) the Indemnifying Party shall fail to notify the other party within thirty (30) days after receipt of notice of any claim or threatened claim of the Indemnifying Party's election to defend such claim; (iii) the Indemnified Parties shall have reasonably concluded that there may be defenses available to it which are different from or in addition to those available to the Indemnifying Party (in which case the Indemnifying Party shall not have the right to direct the defense of such action on behalf of the Indemnified Parties); or (iv) a conflict exists between the Indemnifying Party and the Indemnified Parties which the Indemnified Parties have reasonably concluded would prejudice the Indemnifying Party's defense of such action, then in such case, the Indemnifying Party shall not have the right to direct the defense of such action on behalf of the Indemnified Parties and the Indemnified Parties shall, at the sole expense of the Indemnifying Party, defend against such claim and in the event of a circumstance described in clause (i) and (ii) the Indemnified Parties may settle such claim without the consent of the Indemnifying Party (and the Indemnifying Party may not challenge the reasonableness of any such settlement) and in the event of a circumstance described in clause (iii) and (iv) the Indemnified Parties may not settle such claim without the consent of the Indemnifying Party (which consent will not be unreasonably withheld or delayed).
- F. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NO PARTY SHALL BE LIABLE TO THE OTHER AND EACH PARTY EXPRESSLY RELEASES THE OTHER PARTIES FROM PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF PROFIT, INABILITY TO USE PROPERTY AND/OR EQUIPMENT, OR BUSINESS INTERRUPTION, HOWSOEVER SAME MAY BE CAUSED, REGARDLESS OF OWNERSHIP, REGARDLESS OF WHETHER OCCASIONED BY OR RESULTING FROM THE NEGLIGENCE, STRICT LIABILITY, BREACH OF WARRANTY OR OTHER FAULT OF CITY OR BEO AS THE CASE MAY BE, IN WHOLE OR IN PART, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE.**

ARTICLE VII

REMEDY FOR BREACH

- A. General. Except as otherwise specifically provided herein, if a Party (1) fails to perform any of the material covenants or obligations imposed upon it in this Agreement (except where such failure shall be excused by Force Majeure) and/or (2) makes a representation and/or warranty that proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated, then, and in such event, the opposite Party (e.g., City or BEO, as appropriate) may, at its option (without waiving any other remedy for breach hereof), by written notice specifying the default that has occurred, indicate such Party's election to terminate this Agreement by reason

thereof. The Party in default (City or BEO, as appropriate) shall have 30 days from the receipt of such notice (i) to remedy or cause to be remedied such default, or (ii) to pay or fully indemnify the other Party for all loss or damage incurred as a result thereof. Upon failure to do so, this Agreement shall terminate from and after the expiration of such 30 day period. Any such termination shall be an additional remedy and shall not prejudice the right of the Party not in default to collect any amounts due it hereunder for any damage or loss suffered by it and shall not waive any other remedy to which the party not in default may be entitled for breach of this Agreement. Notwithstanding the foregoing, if a defaulting Party cannot completely remedy or cause to be remedied such default within such 30 day period, but the cure thereof was undertaken promptly upon receipt of such notice and diligently pursued thereafter, this Agreement shall not be terminated pending a reasonably appropriate amount of time for the defaulting Party to promptly complete such remedy.

ARTICLE VIII **FORCE MAJEURE**

A. Each Party shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder, if and to the extent that its failure of, or delay in, performance is due to a Force Majeure; provided that:

- (i) Such Party gives the other Party written notice describing the particulars of the Force Majeure as soon as is reasonably practicable but in no event later than five (5) Business Days after the Party first becomes aware of the occurrence or commencement of such event;
- (ii) The suspension of performance is of no greater scope and of no longer duration than the actual delay arising out of the Force Majeure;
- (iii) No obligations of the affected Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence;
- (iv) The Party uses all reasonable efforts to overcome or mitigate the effects of such occurrence; and
- (v) When the Party is able to resume performance of its obligations under this Agreement, such Party shall give the other Party written notice to that effect and shall promptly resume performance hereunder.

B. The payment of money owed by a Party prior to or during the occurrence of a Force Majeure event shall not be excused due to Force Majeure.

ARTICLE X **MISCELLANEOUS**

- A. General. This Agreement, including any obligations hereunder, is subject to all applicable federal, state, and local laws, rules, codes, regulations, and orders of any governmental authority having jurisdiction.
- B. Applicable Law. The interpretation and enforcement of the terms and provisions of this Agreement shall be governed by and construed in accordance with the law of the State of Ohio, without regard

to principles of conflicts of laws, which could be construed to require the application of the laws of another jurisdiction.

- C. Dispute Resolution. If there is any dispute between the Parties, the Party believing that a dispute exists shall send written notice to the other Party. The chief officers of the Parties must confer at least once to attempt in good faith to resolve any dispute specified in a dispute notice. If such dispute is not resolved by the chief officers within 15 business days after the date of the dispute notice, then either Party may, with the consent of the other party and subject to prior confirmation from the City that it has appropriated funds for its share of the costs, initiate mediation by providing a written request for mediation to a mediation service selected by the American Arbitration Association and providing a copy of the written request to the other Party. If the Parties have agreed to mediation, then each party shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings and to share equally the fees and expenses of mediation. If the City does not confirm that it has appropriated funds or the Parties do not agree on mediation or the dispute cannot be settled by mediation, then either Party may file a case in court or arbitration.
- D. Captions. The captions/headings used herein are included only for convenience or reference and shall have no effect on or be deemed a part of the rest of this Agreement and therefore shall not be used in any way in construing or interpreting this Agreement.
- E. Notices. Any notice under this Agreement must be in writing and addressed to the receiving party and either sent via the United States mail, postage prepaid, return receipt requested, at the notice address below, or sent by email to the email address provided below. A notice sent by US mail is deemed to be received on the date shown on the return receipt and a notice sent by email is deemed received on the same business day as the email is sent, or if such email is not sent on a business day, on the next day after such email is sent which is a business day. The Parties' notice addresses are as follows:

If to BEO: Bio Energy (Ohio II), LLC
2501 Coolidge Rd., Suite 100
Lansing, Michigan 48823
Attn: Director, Operations
Email: contract.notices@edlenergy.com

With a copy to:

EDL Holdings (US), Inc.
P.O. Box 15217
Lansing, MI 48901
Attn: General Counsel, NA
Email: stephanie.reeves@edlenergy.com

If to City: City of Oberlin
Attn: City Manager
69 South Main Street Oberlin, OH 44074
rhillard@cityofoberlin.com

Any notice given in the manner set forth above shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours.

- F. Relationship of the Parties. This Agreement is not intended to and does not create any relationship of partnership, joint venture, agency, or employment between the Parties. Each Party is and will remain an independent contractor as to the other Party in all respects and in the performance of all work and activities under this Agreement. The detailed methods and manner of conducting such work and activities by such Party will be under the complete control and direction of such Party. Nothing in this Agreement will limit or be interpreted as conflicting with the independent contractor status of such Party and its subcontractors and, in the event of any such conflict, the provisions of this Section will govern.
- G. Waiver. No waiver by any Party of any of its rights or one or more defaults by any other Party in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any other right or future default, whether of a like or different character.
- H. Conflicts. In the event of any conflict between this Agreement and any exhibit attached hereto, this Agreement shall control.
- I. Assignment; Scope. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns; *provided, however*, except as provided herein, this Agreement shall not be transferred or assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed, or conditioned. The execution of this Agreement does not authorize the purchase and sale of Electricity between BEO and City. Any purchase and sale of Electricity between BEO and City will only be rendered, after the execution of, and in accordance with, an electric service agreement between the Parties.
- J. Entirety of Agreement. The exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. This Agreement, and any exhibits attached hereto contain the entire agreement of the Parties with respect to the matters covered hereby. No prior or contemporaneous agreement, statement, or promise with respect to the subject matter of this Agreement made by any Party, or to any employee, officer, or agent of any Party, which is not contained in this Agreement shall be binding or valid. This Agreement may be amended only by written instrument signed by the Parties.
- K. Confidentiality. Subject to Ohio's Public Records Laws and to the maximum extent permissible by law, the Parties agree to keep the terms and provisions of this Agreement confidential and not to disclose the same to any third parties during the Term and for one (1) year thereafter; *provided, however*, that each Party shall have the right to make such disclosures, if any, to governmental agencies, to its affiliates and its and their employees, officers, directors, attorneys, auditors, accountants, and shareholders, and to third parties as may be reasonably necessary in connection with its performance hereunder. If disclosure is sought through process of a court or governmental entity, the Party from whom disclosure is sought shall provide the other Party with notice as soon as

practicable of such requested disclosure. Notwithstanding the foregoing, a Party may disclose such information to a court or governmental entity if, in the opinion of such Party's counsel, such disclosure is legally desirable, necessary or required by law.

- L. Rules of Construction. In construing this Agreement, the following principles apply unless the context otherwise requires: (i) examples are not to be construed to limit, expressly or by implication, the matter they illustrate; (ii) the word "includes" and its syntactical variants means "includes, but is not limited to" and corresponding syntactical variant expressions; (iii) the plural is deemed to include the singular and vice versa, as applicable; (iv) the word "or" is not exclusive; (v) references herein to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (vi) references herein to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder.
- M. Survival. Article II(H), Article II(I), Article II(K), Article IV(B), Article VI, Article X(B), Article X(C), and Article X(K) shall survive the termination of this Agreement.
- N. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- O. Further Assurances. Each of the Parties shall, and shall cause its respective affiliates to, from time to time at the request of the other Party, without any additional consideration, furnish the other Party such further information, execute and deliver such additional documents, instruments and conveyances, and take such other actions and do such other things, as may be necessary to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby and thereby.
- P. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together constitute one agreement between the Parties. Each Party agrees that the electronic signatures (e.g., PDF) of the Parties are intended to authenticate this writing and have the same force and effect as manual signatures.


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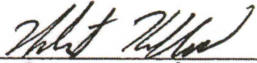
IN WITNESS WHEREOF, this Substation Construction and Transfer Agreement is executed by each of the Parties on the date shown with their respective signatures, effective for all purposes as of the Effective Date.

Bio Energy (Ohio II), LLC

By: Bio Energy (I), LLC, its sole member
By: Bio Energy (US), LLC, its sole member
By: EDL Holdings (US), Inc., its sole member

City of Oberlin, Ohio

By: 
Name: RAYMOND IVERS
Title: PRESIDENT, OPERATIONS

By: 
Name: Robert Hillard
Title: City Manager

APPROVED AS TO FORM:

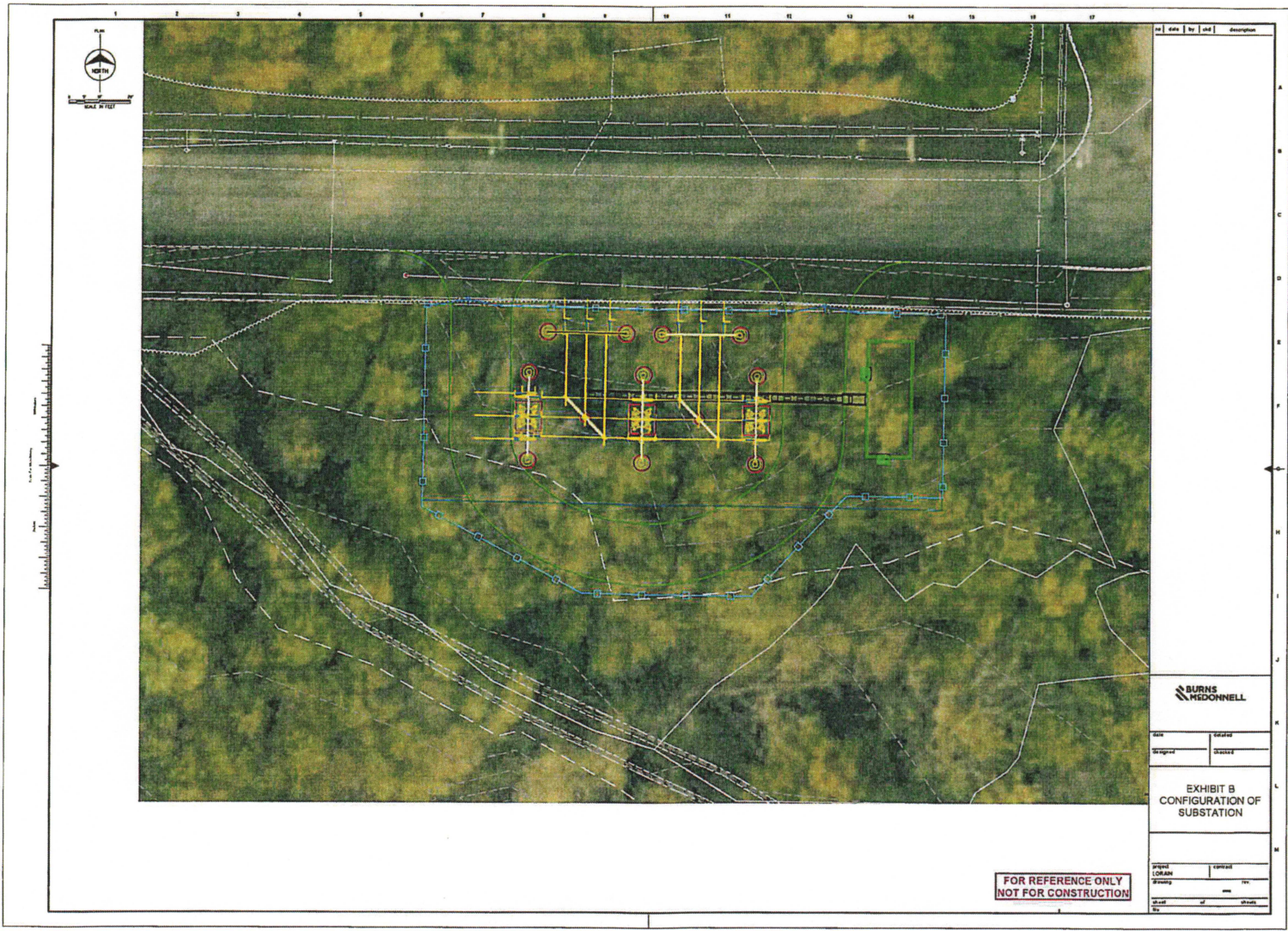

Jon D. Clark, Law Director
2/4/2022
Date

Area 2 - Laydown Area
2.00 Acres

N Oberlin Rd

Hillcreek Rd

Area 1 - Substation Area
1.30 Acres



no. date by and description

A
B
C
D
E
F
G
H
I
J
K
L
M

BURNS & MCDONNELL

date	status
revised	status

**EXHIBIT B
CONFIGURATION OF
SUBSTATION**

original	revised
location	date
drawing	date
sheet	of
no.	drawn

EXHIBIT "C"

Form of Bill of Sale and Assignment and Assumption Agreement

BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT

This Bill of Sale and Assignment and Assumption Agreement (this "*Agreement*") is executed and delivered as of the ____ day of February 2022, (the "*Effective Date*"), by Bio Energy (Ohio II), LLC, a Delaware limited liability company ("*Assignor*"), to the City of Oberlin, Ohio ("*Assignee*"). Capitalized terms used, but not defined, in this Agreement shall have their respective meanings set forth in the Substation Construction and Transfer Agreement.

1. Bill of Sale and Assignment and Assumption. In return for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, as of the Effective Date, and subject to the terms and conditions set forth in this Agreement, Assignor hereby irrevocably sells, conveys, assigns, transfers, and delivers to Assignee and its successors and assigns forever, and Assignee hereby:

- (a) purchases, accepts, and acquires from Assignor, all right, title, and interest in and to the Substation; and
- (b) accepts and assumes, and shall pay, perform, and discharge, as and when due, all of the duties, obligations, and liabilities accruing on and after the Effective Date with respect to the Substation.

2. Representations and Warranties.

(a) Assignor represents and warrants to Assignee that as of the Effective Date, the Substation is not in need of maintenance or repair except for ordinary, routine maintenance and repairs that are not material in nature or cost.

3. Precedence. Except as otherwise set forth in this Agreement, (a) the Substation is hereby sold, conveyed, assigned, transferred, and delivered by Assignor and accepted by Assignee subject to and in accordance with all of the terms and conditions of the Substation Construction and Transfer Agreement, and (b) the respective rights and obligations of Assignor and Assignee are subject to all of the terms of, and the limitations set forth in, the Substation Construction and Transfer Agreement. In the event of any irreconcilable conflict between the terms and provisions of this Agreement and the terms and provisions of the Substation Construction and Transfer Agreement, the terms and provisions of this Agreement shall control.

4. Merger. SUBJECT TO SECTION 3, THE DELIVERY OF THIS AGREEMENT SHALL NOT DIMINISH, IMPAIR, AUGMENT, OR OTHERWISE MODIFY ANY OF THE REPRESENTATIONS, WARRANTIES, COVENANTS, CONDITIONS, INDEMNITIES, TERMS, OR PROVISIONS OF THE SUBSTATION CONSTRUCTION AND TRANSFER AGREEMENT, AND ALL OF THE REPRESENTATIONS, WARRANTIES, COVENANTS, CONDITIONS, INDEMNITIES, TERMS, AND PROVISIONS CONTAINED IN THE SUBSTATION CONSTRUCTION AND TRANSFER AGREEMENT SHALL SURVIVE THE DELIVERY OF THIS AGREEMENT TO THE EXTENT, AND IN THE MANNER, SET FORTH IN THE SUBSTATION CONSTRUCTION AND TRANSFER AGREEMENT.

5. Further Assurances. Assignor, for itself, its successors and assigns, hereby covenants and agrees that, at any time and from time to time upon the written request of Assignee, Assignor will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney, and assurances as may be requested by Assignee in order to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the Substation Construction and Transfer Agreement.

6. Assignment; Construction; Counterparts. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns. This Agreement will be interpreted, construed and governed by the laws of the state of Ohio, excluding any conflict of law rules which would refer to the laws of another jurisdiction. This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an originally executed original. Facsimile or other electronic copies of signatures shall constitute original signatures for all purposes of this Agreement and any enforcement hereof.

7. Certain Definitions. For purposes of this Agreement, the following terms shall have their respective meanings set forth below:

“Substation Construction and Transfer Agreement” means that certain Substation Construction and Transfer Agreement by and between Assignor and Assignee, dated February __, 2022, as may be amended, restated, modified, or supplemented from time-to-time.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, this Bill of Sale and Assignment and Assumption Agreement has been duly executed and delivered as of the Effective Date.

ASSIGNOR:

ASSIGNEE:

Bio Energy (Ohio II), LLC

By: Bio Energy (I), LLC, its sole member

By: Bio Energy (US), LLC, its sole member

By: EDL Holdings (US), Inc., its sole member

City of Oberlin, Ohio

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

- Review handover documentation
- Review design changes and request for information (RFI) as required

The Owner's Engineer shall be compensated on a time and material basis with a maximum not to exceed contract.

Invoicing shall be monthly.

EXHIBIT "D"

Scope of Work

Provide Owner's Engineer work to oversee the development of a new three ring bus substation (3-ring bus) to support the development of the Bio Energy (Ohio II), LLC (EDL) renewable natural gas plant to be located at 520 Hill Creek Drive, Oberlin. EDL will be responsible for the design, construction and commissioning of the 3-ring bus through its design and construction contractor(s). At the completion of construction, the 3-ring bus will be turned over to the City of Oberlin to own and operate. EDL is responsible for all 69kV construction required for operation of their RNG plant. The City of Oberlin's Owner's Engineer shall:

- advise the City on the system EDL is proposing, including providing any standards requested by EDL should such standards not already exist in the City's standard guide
- review the design provided by EDL and provide comments to the City to be communicated to EDL
- participate in regular project update meetings with the City and EDL
- review the construction work
- participate in the commissioning of the 3-ring bus and the updated programming of the OMLPS 69 kV loop
- review the handover documentation
- advise the City of any deficiencies in EDL's work that may preclude the turnover of the 3-ring bus to the City

The work shall be divided into two phases:

1. Engineering and design review
2. Construction and commissioning support

Phase 1 - Engineering and Design Review:

- Participate in biweekly coordination meetings with the City, EDL and EDL's engineer to be approximately 1 hour per every two weeks
- Review the engineering design within 7 business days of receipt of each design package below and provide comments to the City of Oberlin for transmission to EDL. The design shall be reviewed at the following stages:
 - 30% design review
 - 60% design review
 - 90% design review
 - Major equipment procurement (assume two rounds of major equipment submittals)
- Provide any standards requested by EDL that the City does not already have
- Provide relaying settings for the EDL 3-ring bus
- Provide updated relaying settings of the OMLPS 69 kV loop

Phase 2 – Construction:

- Participate in weekly construction progress calls
- Review daily construction progress reports provided by EDL as requested by the City of Oberlin
- Review monthly progress update provided by EDL
- Visit the site once every two weeks during general construction
- Visit the site at key milestones to be mutually agreed upon with the City
- Participate in the pre-commissioning walkdown of the construction and prepare a punchlist of any deficiencies which would preclude the energization of the 3-ring bus. EDL will provide a 10 day notice when pre-commissioning is expected to occur.
- Program and provide commissioning oversight of the complete and updated 69 kV loop relaying
- Review test results provided by EDL or the City and confirm that the equipment is ready for energization

IN WITNESS WHEREOF, this Bill of Sale and Assignment and Assumption Agreement has been duly executed and delivered as of the Effective Date.

ASSIGNOR:

ASSIGNEE:

Bio Energy (Ohio II), LLC

By: Bio Energy (I), LLC, its sole member

By: Bio Energy (US), LLC, its sole member

By: EDL Holdings (US), Inc., its sole member City of Oberlin, Ohio

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____