

ORDINANCE NO. 04-22 AC CMS

AN ORDINANCE APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF
A JOINT VENTURE AGREEMENT CREATING OHIO MUNICIPAL ELECTRIC
GENERATING AGENCY JOINT VENTURE 6 BY THE CITY OF OBERLIN, OHIO WITH
OTHER OHIO MUNICIPALITIES AND TAKING CERTAIN OTHER ACTIONS IN
CONNECTION THEREWITH

WHEREAS, the City of Oberlin, Ohio (the "Municipality"), owns and operates an electric utility system for the sale of electric power and energy for the benefit of its citizens and taxpayers; and

WHEREAS, in order to satisfy the electric power and energy requirements of its electric utility system, the Municipality has heretofore purchased economical and reliable power and energy from American Municipal Power-Ohio, Inc. ("AMP-Ohio"), an Ohio corporation not for profit, of which the Municipality is a member; and

WHEREAS, the Municipality, acting individually and, along with other Ohio municipalities that are also members of AMP-Ohio ("Members") and that own and operate electric utility systems, jointly through AMP-Ohio, endeavors to arrange for reliable, reasonably priced supplies of electric power and energy for ultimate delivery to consumers; and

WHEREAS, it is efficient and economical to act jointly in such regard and the same is contemplated and authorized by, *inter alia*, Article XVIII. Sections 3 and 4 of the Ohio Constitution and Ohio R.C. §715.02; and

WHEREAS, AMP-Ohio, on behalf and at the direction of Municipality and other participating AMP-Ohio Members (collectively "Participants"), in order to assist the Participants in securing environmentally-friendly generation resources to provide power and energy, has heretofore purchased and installed, or is in the process of installing in AMP-Ohio Member community, Bowling Green, Ohio, certain wind-power generators with a total nameplate capacity of approximately 3.6 megawatts, which could be increased to up to 7.2 megawatts, collectively known as the Windpower Project; and

WHEREAS, the Project provides an opportunity for the Participants to receive renewable energy at reasonable costs if owned and operated by the Participants as an intergovernmental joint venture.

WHEREAS, the Participants, including Municipality, in order to become owners of Project Shares (as defined in Exhibit 1 of the Joint Venture Agreement) in the Project and to operate the Project jointly, have determined to exercise jointly their powers under the Ohio Constitution, in the manner contemplated by Ohio Revised Code §715.02 to the extent applicable, and the Joint Venture Agreement [attached hereto as Exhibit A or on file with the

Clerk] as a joint venture to be known as OMEGA JV6 (capitalized terms herein shall have the same meaning as set forth in the Joint Venture Agreement); and

WHEREAS, in order to obtain their Project Shares, the Participants desire, and pursuant to the Joint Venture Agreement agree jointly to acquire, own, operate, and maintain the Project, and to pay for the Project, and the electric power and energy produced thereby or available therefrom, such amounts as are, in the aggregate, sufficient to pay all of the costs and expenses with respect to the Project and to meet their, and OMEGA JV2's, obligations under the Joint Venture Agreement; and

WHEREAS, AMP-Ohio, on behalf and at the direction of the Participants, has prepared and heretofore delivered to this Municipality the form of the Joint Venture Agreement pursuant to which those Participants electing to enter into such agreement would commit jointly, to own or secure the rights to Project Shares and to operate, and to arrange for the delivery of electric power and energy from each Participant's Project Share; and

WHEREAS, AMP-Ohio, on behalf and at the direction of the Participants, has made available or provided appropriate personnel and information regarding the Project to the Municipality, as such officers and representatives of this Municipality have deemed necessary or appropriate, to enable this Municipality to evaluate the benefits and risks of the Project and the Joint Venture Agreement, to take actions contemplated by this ordinance and the Joint Venture Agreement, and to determine the same are in the public interest; and

WHEREAS, this Municipality desires the Participants, acting jointly pursuant to the Joint Venture Agreement, to proceed with the acquisition and operation of the Project in accordance with the Joint Venture Agreement and the development of such other project resources and associated transmission arrangements, as the Participants, acting jointly and in accordance with Joint Venture Agreement, may deem necessary or convenient in order to meet their obligations under the Joint Venture Agreement; and

WHEREAS, in recognition of the unique nature of the Project and the need to form the joint venture and acquire the Project's facilities in a timely manner, competitive bidding is not required for the Municipality's acquisition of its Project Share, and any competitive bidding requirement that might otherwise be applicable should be waived; and

WHEREAS, it is understood by this Municipality that all payments made by this Municipality pursuant to the Joint Venture Agreement shall constitute an obligation of this Municipality's electric utility system payable from the revenues thereof as specified in the Joint Venture Agreement and the Municipality agrees to fix, charge and collect rates sufficient, together with other legally available funds, to pay its obligations thereunder along with all other legally required payments of the Municipality's electric utility system.

NOW THEREFORE BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, a majority of members elected thereto concurring:

SECTION 1. That the form of Joint Venture Agreement creating Ohio Municipal Electric Generating Agency Joint Venture 6 [attached hereto as Exhibit A or on file with the Clerk] including the Appendices thereto; among this Municipality and such other AMP-Ohio Members as may enter into such Joint Venture Agreement as provided therein, be, and the same hereby is, approved, subject to and with any and all changes provided hereby and thereby.

SECTION 2. That the City Manager is hereby authorized and directed to acquire, for on-behalf-of and in-the-name-of the Municipality as an Owner Participant in OMEGA JV6, its Project Share, without bid, from AMP-Ohio and any other municipalities owning an interest in the facilities that will become a part of the Project and to execute and deliver any and all documents necessary to participate in OMEGA JV6 as an Owner Participant (as defined in Exhibit 1 to the Joint Venture Agreement) pursuant to the conditions set forth hereinafter.

SECTION 3. That it is further acknowledged and understood that because the Participants will finalize the precise Project Share to be acquired by each Participant electing to enter into the Joint Venture Agreement after all such Participants execute and deliver the Joint Venture Agreement, the City Manager in connection with the execution and delivery of the Joint Venture Agreement, as hereinafter authorized, is authorized and directed to determine and acquire Municipality's Project Share, of an equivalent nominal amount of 250 kilowatts, such Project Share to be set forth in Appendix A of the attached form of the Joint Venture Agreement, such determination as to such Project Share being conclusively evidenced by the adoption of Appendix A to the Joint Venture Agreement, as authorized therein.

SECTION 4. That the City Manager of this Municipality is authorized and directed to execute and deliver on behalf of this Municipality an agreement, with such changes therein (in addition to such changes as are hereinabove provided for), if any, as said officer shall deem necessary and advisable, substantially in the form of the Joint Venture Agreement, and shall approve, such approval being conclusively evidenced by the execution and delivery of the Joint Venture Agreement.

SECTION 5. That the City Manager of this Municipality, as a part of such officer's official duties, is hereby appointed as Municipality's representative on the Board of Participants created pursuant to the Joint Venture Agreement and is authorized and directed, acting for, in the name of and on behalf of this Municipality, to vote Municipality's Project Share with regard to the management of the Project as set forth in the Joint Venture Agreement and to make, execute, acknowledge, certify, file, verify, issue and deliver all applications, agreements, documents, instruments, consents, and certifications, and to do or cause to be done all acts, and to take all steps, and to make all payments and remittances, as may in each case be, in the opinion of such officer (such officer's opinion to be conclusively evidenced by the taking of the action), necessary or desirable in order to fulfill this Municipality's obligations under the Joint Venture Agreement, other actions or documents in connection with the Project, or the application for any required permits or licenses.

SECTION 6. That, for the reasons set forth in the preamble hereto, any competitive bidding requirements, to the extent applicable to the actions authorized herein, are hereby waived.

SECTION 7. That is it found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

SECTION 8. That in taking the above stated action approving the form of the Joint Venture Agreement, together with its execution and delivery, the Municipality shall be deemed to have acted pursuant to Article XVIII of the Constitution of the State of Ohio and that any competitive bidding otherwise applicable to the acquisition by the Municipality of its Project Share is hereby waived.

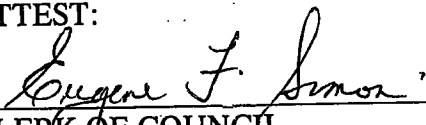
SECTION 9. If any section, subsection, paragraph, clause or provision or any part thereof of this ordinance shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this ordinance shall be unaffected by such adjudication and all the remaining provisions of this ordinance shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.

SECTION 10. That this ordinance is hereby declared an emergency measure necessary for the preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio, and to provide for the usual daily operation of the municipal utility to wit:

"To authorize the City Manager to execute an agreement with OMEGA JV6 at the earliest date possible to allow AMP-Ohio to: move forward with authorization of constructing two new wind turbines; to transfer the financing costs of the wind turbine project to OMEGA JV6; and to complete the organizational structure of OMEGA JV6", and shall take effect immediately upon passage.

PASSED: 1st Reading - March 1, 2004
2nd Reading - March 15, 2004 (E)
3rd Reading -

ATTEST:


CLERK OF COUNCIL


CHAIR OF COUNCIL

POSTED: March 16, 2004

EFFECTIVE DATE: March 16, 2004

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OMEGA JV6
INTERGOVERNMENTAL
JOINT VENTURE AGREEMENT

AMONG
THE MUNICIPALITIES LISTED ON THE
ATTACHED APPENDIX A OF PARTICIPANTS
REGARDING
OHIO MUNICIPAL ELECTRIC GENERATION AGENCY
JOINT VENTURE 6

This Intergovernmental Joint Venture Agreement dated as of December 15, 2003, is made and entered into by and among the Participants (defined *infra*);

WHEREAS, each of the Participants owns and operates a municipal electric utility system for the benefit of its citizens;

WHEREAS, the Participants, acting individually and, along with other municipalities that own and operate electric utility systems and are members of AMP-Ohio (defined *infra*), jointly through AMP-Ohio, have arranged or have the opportunity to arrange for reliable, reasonably priced supplies of electric power and energy for ultimate delivery to their consumers;

WHEREAS, AMP-Ohio has caused to be constructed for the benefit of the Participants two (2) wind turbines, with a nominal capacity of 3.6 MW, and related facilities, including those required to connect the two (2) wind turbines, to the City of Bowling Green electric system;

WHEREAS, certain of the Participants have previously entered into an agreement with AMP-Ohio to purchase a share of the output of the wind energy project and AMP-Ohio is making ownership of the same available to the Participants jointly in order to provide the Participants opportunities for more direct control and lower costs;

1 WHEREAS, the wind turbines, and any additional turbines constructed under the terms
2 hereof (as further defined herein as "Project"), if owned and operated by the Participants as an
3 intergovernmental joint venture, provide an opportunity for the Participants to receive renewable
4 energy, or the benefits thereof, at reasonable costs.

5 WHEREAS, AMP-Ohio has entered into a certain Energy Attributes Agreement (defined
6 *infra*) with Green Mountain Energy for the sale of certain renewable or green energy attributes
7 related to the Project for the benefit of the Project.

8 WHEREAS, it is efficient and economical for members of AMP-Ohio to act jointly in
9 regard to the matters contemplated herein and the same are contemplated and authorized by,
10 *inter alia*, Article XVIII, Sections 3 and 4 of the Ohio Constitution and Ohio R.C. §715.02;

11 WHEREAS, the Participants have determined to exercise jointly their powers under the
12 Ohio Constitution in the manner contemplated by Ohio R.C. §715.02, to the extent applicable,
13 and this Joint Venture Agreement as an intergovernmental joint venture to be known as OMEGA
14 JV6 in order to accomplish their goals in the manner set forth herein;

15 WHEREAS, the Participants desire, and pursuant to this Joint Venture Agreement hereby
16 agree, jointly to plan, acquire, construct, operate and maintain the Project, certain of the
17 Participants desire, and pursuant to a Financing Agreement with AMP-Ohio, have agreed, jointly
18 to finance their shares of the Project Costs and all Participants desire, and hereby agree, to pay
19 jointly for the electric power, energy and other services associated with the Project, such
20 amounts as are, in the aggregate, sufficient to pay all of the costs and expenses with respect to
21 the Project and to meet their, and OMEGA JV6's, respective obligations as provided in this Joint
22 Venture Agreement and provide for the payment of Revenue Requirements as specified herein.

23

1 WHEREAS, AMP-Ohio (i) has facilitated the formation of OMEGA JV6, including the
2 purchase and construction, on the Participants' behalf, of certain of the facilities that will be a
3 part of the Project and will transfer ownership of the same to the Participants as specified herein,
4 (ii) has entered the Energy Attributes Agreement , and (iii) will arrange for the financing of
5 Project Costs for those Participants requesting such financing and has entered into Related
6 Agreements for the financing, administration and operation of OMEGA JV6; and,

7 WHEREAS, certain of the Participants desire and, pursuant to a Financing Agreement
8 with AMP-Ohio, agree jointly to finance their shares of the Project Costs and to meet their and
9 AMP-Ohio's respective obligations as provided in the Financing Agreement and provide for the
10 making of Bond Payments as therein provided.

11 NOW, THEREFORE, for and in consideration of the mutual covenants and agreements
12 herein contained, it is agreed by and among the Participants, on their own behalf and on behalf of
13 OMEGA JV6, as follows:

14 SECTION 1. DEFINITIONS AND EXPLANATIONS OF TERMS

15 As used herein all terms shall have the definitions contained in Exhibit 1 hereto. Except
16 where the content otherwise requires, words importing the singular number shall include the
17 plural number and *vice versa*, and words importing persons shall include firms, associations,
18 public and private corporations, and any other legal entities. The reference to an Article,
19 Section, Paragraph, Clause, Exhibit or Appendix or portion thereof indicates that the citation is
20 to an Article, Section, Paragraph, Clause, Exhibit or Appendix of this Joint Venture Agreement.

21 SECTION 2. REPRESENTATIONS

22 Each Participant represents to the other Participants and to AMP-Ohio that, as of the
23 effective date hereof:

1 (i) the Participant is a municipal corporation, duly created and validly
2 existing pursuant to the Constitution and statutes of the State of Ohio;

3 (ii) the Participant has full legal right and authority to enter into this Joint
4 Venture Agreement, to carry out its obligations hereunder and to furnish electric power and
5 energy to its customers;

6 (iii) the governing body which has the requisite authority to authorize an
7 appropriate officer or officers of the Participant to execute and deliver this Joint Venture
8 Agreement in the name of, and on behalf of, the Participant is the Utility Governing Body. The
9 Utility Governing Body duly approved this Joint Venture Agreement and authorized its
10 execution and delivery on behalf of the Participant by legislative action duly and lawfully
11 adopted at a meeting or meetings duly called and held pursuant to necessary public notice at
12 which quorums were present and acting throughout and all other actions (such as publication)
13 with regard thereto have been accomplished. Such legislative action constitutes an ordinance
14 pursuant to Article XVIII of the Constitution of the State of Ohio and became effective prior to
15 the execution of this Joint Venture Agreement by such appropriate officer;

16 (iv) this Joint Venture Agreement has been duly executed and delivered by the
17 appropriate officer or officers of the Participant pursuant to legislative action authorizing or
18 directing the same; and this Joint Venture Agreement constitutes the legal, valid, and binding
19 obligation of the Participant enforceable in accordance with its terms, except to the extent
20 enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other
21 similar laws affecting creditors' rights generally, the availability of the remedy of specific
22 enforcement, injunctive relief or any other equitable principle;

23

1 (v) the execution and delivery of this Joint Venture Agreement by the
2 Participant and the performance by the Participant of its obligations hereunder do not and will
3 not contravene in any material respect any law in existence on the date of execution and delivery
4 of this Joint Venture Agreement or any order, injunction, judgment, decree, rule or regulation, in
5 existence on the date of execution and delivery of this Joint Venture Agreement, of any court or
6 administrative agency having jurisdiction over the Participant or its property or, in any material
7 respect, result in a breach or violation of any of the terms and provisions of, or constitute a
8 default under, any bond ordinance, trust agreement, indenture, mortgage, deed of trust or other
9 agreement in existence on the date of execution and delivery of this Joint Venture Agreement to
10 which the Participant is a party or by which it or its property is bound;

11 (vi) except as disclosed on Appendix K, if the Participant has outstanding,
12 under any mortgage indenture, ordinance, resolution or other instrument, any bonds, notes or
13 other obligations, the proceeds of which were, or were intended, to be used for the purposes of its
14 electric system, the Project is not by the terms of any such instrument subject to any lien in favor
15 of the holders of such bonds, notes or other obligations;

16 (vii) all approvals, consents or authorizations of, or registrations or filings with,
17 any governmental or public agency, authority or person which are required to have been obtained
18 on the date hereof on the part of the Participant in connection with the execution, delivery and
19 performance by the Participant of this Joint Venture Agreement have been obtained or made
20 except those to be obtained in conjunction with the actual acquisition, construction and operation
21 of the Project;

22 (viii) the Participant has power and authority to fix, charge, collect and revise
23 the rates charged to its electric customers in accordance with this Joint Venture Agreement and,

1 except with respect to those laws and regulations identified in Appendix K, such rates are not
2 subject to regulation by any regulatory authority of the State of Ohio or the United States of
3 America;

4 (ix) the payment obligations of the Participant, if an Owner Participant, to
5 OMEGA JV6 (a) for Operating Expenses pursuant to this Joint Venture Agreement are payable
6 from the revenues of the Participant's municipal electric utility system as O&M Expenses and,
7 except for such bonds, notes or other evidences of indebtedness, if any, disclosed in writing to
8 the other Participants prior to the execution and delivery of this Joint Venture Agreement by the
9 Participant as set forth in Appendix K, neither such Participant nor its electric system has
10 outstanding any bonds, notes or other evidences of indebtedness payable from any revenues of
11 its municipal electric utility system prior to or on a parity with such payments under this Joint
12 Venture Agreement and (b) for the Other Required Payments hereunder are payable from the
13 revenues of the Participant's municipal electric utility system after the provision of O&M
14 Expenses and payments with respect to any bonds, notes or other evidences of indebtedness;

15 (x) the payment obligations of the Participant, if a Purchasing Participant, to
16 OMEGA JV6 for Revenue Requirements pursuant to this Joint Venture Agreement are payable
17 from the revenues of the Participant's municipal electric utility system as O&M Expenses and,
18 except for such bonds, notes or other evidences of indebtedness, if any, disclosed in writing to
19 the other Participants by inclusion in Appendix K prior to the execution and delivery of this Joint
20 Venture Agreement by the Participant, neither such Participant nor its municipal electric utility
21 system has outstanding any bonds, notes or other evidences of indebtedness payable from any
22 revenues of its municipal electric utility system prior to or on a parity with such payments under
23 this Joint Venture Agreement.

(xi) except for pending or threatened litigation, if any, disclosed in writing to the other Participants prior to the execution and delivery of this Joint Venture Agreement by the Participant by inclusion in Appendix K, there is no litigation or other proceeding pending or, to the best knowledge of the Participant, threatened against the Participant in any court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization or existence of the Participant, the Utility Governing Body or its municipal electric utility system or the validity, legality or enforceability of this Joint Venture Agreement, other than any proceeding brought by or on behalf of AMP-Ohio, OMEGA JV6 or the Participants specifically to validate this Joint Venture Agreement or any bonds, notes or other evidence of indebtedness issued by AMP-Ohio on behalf of a Financing Participant or by a Non-Financing Participant, to pay a share of Project Costs.

(xii) prior to the execution and delivery of this Joint Venture Agreement by the Participant, such Participant's duly authorized representatives have been provided the opportunity to ask such questions, review such data and reports, conduct such inspections and otherwise perform such investigation with respect to the Project, and the terms and conditions of this Joint Venture Agreement and the Appendices, including the form of the Financing Agreement, the Trust Indenture and the Related Agreements (as the same exist at the time of execution), as the Participant deems necessary or appropriate in connection with its entering into this Joint Venture Agreement;

(xiii) in case of a Financing Participant, after consideration of the potential risks and benefits, the Participant, has determined that it is reasonable and in its best interest to be either an Owner Participant and to own an undivided interest, as a tenant in common, in the Project in the amount of its Project Share or to be a Purchaser Participant and to purchase the

1 Project Power associated with its Project Share, ownership of which is held in trust as specified
2 herein and, in any case, whether an Owner Participant or a Purchaser Participant, to become
3 obligated to pay the costs associated with the same as incurred by the Participant and OMEGA
4 JV6, on behalf of the Participants, in accordance with this Joint Venture Agreement in amounts
5 which are sufficient (assuming performance by the all Participants and OMEGA JV6 with all
6 their respective payment obligations), taken together with the other components of Revenue
7 Requirements, to enable the Participants and OMEGA JV6 to meet their respective obligations
8 and to recover all of the costs and expenses with respect to this Joint Venture Agreement, the
9 Project, and the Related Agreements as well as to be obligated to make all payments under the
10 Financing Agreement;

11 (xiv) in the case of a Non-Financing Participant, after consideration of the
12 potential risks and benefits, the Participant has determined that it is reasonable and in its best
13 interest to be either an Owner Participant and to own an undivided interest, as a tenant in
14 common, in the Project in the amount of its Project Share or to be a Purchaser Participant and to
15 purchase the output associated with its Project Share, ownership of which is held in trust as
16 specified herein and, in any case, whether an Owner Participant or a Purchaser Participant, to
17 become obligated to pay the costs associated with the same as incurred by the Participant and
18 OMEGA JV6, on behalf of the Participants, in accordance with this Joint Venture Agreement in
19 amounts which are sufficient, taken together with the other components of Revenue
20 Requirements, to enable the Participants and OMEGA JV6 to meet their respective obligations
21 and to recover all the costs and expenses with respect to this Joint Venture Agreement, the
22 Project, and the Related Agreements.

(xv) the Participants have requested that AMP-Ohio undertake and coordinate Project planning and drafting of this Joint Venture Agreement, and the engineering, financing and construction of certain portions of the Project, all on behalf of the Participants, and desire that OMEGA JV6 acquire, without bid, for the compensation specified in Appendix L, such portions of the Project as are listed thereon and owned by AMP-Ohio; and

(xvi) where the consent of the Participant or OMEGA JV6 is required for AMP-Ohio or the trustee under the Trust Indenture to take or refrain from taking some action, the Participant will not withhold such its consent unreasonably or in bad faith.

SECTION 3. JOINT UNDERTAKINGS

(A) The Participants, acting jointly as OMEGA JV6, in good faith and in accordance with Prudent Utility Practice and subject to the provisions of this Joint Venture Agreement and Related Agreements, hereby establish OMEGA JV6 and authorize, empower, and direct it to perform, in accordance with this Joint Venture Agreement, such undertakings for the benefit of the Participants as are specified herein, subject to such limitations and standards as are set forth herein; and the Participants individually and jointly, as provided in the Joint Venture Agreement and Related Agreements, shall use their best efforts and hereby covenant as follows:

(i) to undertake, or cause to be undertaken, (x) the acquisition, construction and equipping of the Project, any planning or engineering studies related thereto and the acquisition, without bid, of such of the Project, if any, as has been acquired, constructed and equipped by AMP-Ohio or any of the Participants individually or jointly prior to such acquisition, including, without limitation, entering into agreements with Participants relating thereto, (y) the operating, maintaining, rehabilitating, retiring, decommissioning and disposing of the Project, or portions thereof, including, without limitation, entering into agreements with Participants relating thereto,

1 and (z) the acquisition and renewal of all federal, state and local permits, licenses and other
2 rights and regulatory approvals necessary therefor;

3 (ii) to dedicate their respective Project Shares to OMEGA JV6 and receive the
4 compensation and pay the costs associated with the same, as set forth in this Joint Venture
5 Agreement, the amount and timing of such compensation to be determined from time to time by
6 the Board of Participants;

7 (iii) to undertake, or cause to be undertaken, such efforts and measures as may
8 from time to time be required to comply and remain in compliance with all lawful orders of any
9 governmental bodies or agencies with jurisdiction over the Project or OMEGA JV6;

10 (iv) to undertake, or cause to be undertaken, the acquisition of such contractual
11 rights and operating arrangements as are necessary or desirable to make Project Power available
12 to all the Participants at the Points of Availability and to endeavor, to the extent provided herein,
13 to make such contract arrangements necessary or desirable to make Project Power available to all
14 Participants at their respective Points of Delivery, or to other points for the benefit of the
15 Participants in such amounts and on such terms as are set forth in this Joint Venture Agreement;

16 (v) to perform such rate setting, billing, collection and accounting, as
17 OMEGA JV6 shall determine appropriate, for the use or availability of Project Power by or to
18 any Participant or third party;

19 (vi) to prohibit OMEGA JV6 from engaging in any business other than that
20 associated with or reasonably incidental to the Project, as set forth in this Joint Venture
21 Agreement;

22 (vii) to operate OMEGA JV6 at all times on a not-for-profit basis for the
23 mutual benefit of the Participants; *provided, however*, that not-for-profit shall not be construed to

1 mean that OMEGA JV6 may not provide facilities or services for compensation greater than
2 cost; and

3 (viii) to bring any and all legal actions relating to the Project, or OMEGA JV6,
4 or defend the same, either in the name of the individual Participants jointly or in the name of
5 OMEGA JV6;

6 (B) As soon as practical after the effective date of this Joint Venture Agreement, as
7 specified in Section 33(A), there shall be an initial meeting of the Participants held at a time and
8 place determined by AMP-Ohio. Notice for such meeting shall be given in writing and mailed
9 not less than seven (7) days, or hand delivered not less than two (2) business days, prior to such
10 meeting. In addition to such other business that shall properly be determined by the Participants
11 at such meeting in accordance with the Regulations, the Participants shall adopt at such meeting,
12 a final allocation of Project Shares among the Participants with due regard to, among other
13 things, the amount requested by each Participant; *provided, however*, that in no case shall a
14 Participant be allocated a share lesser than any minimum amount or greater than any maximum
15 amount specified by such Participant pursuant to the legislation authorizing participation in
16 OMEGA JV6. Such finalized Project Shares, as adopted, shall have been reflected on a revised
17 Appendix A and shall total 100% of Project Shares.

18 (C) The Owner Participants hereby agree that they, or their representatives acting in
19 their official capacities, as a committee of the Board of Participants, shall hold title, as trustees,
20 to the ownership interests of the Purchaser Participants, under the terms and conditions of the
21 Purchaser Participant Trust Agreement included as a Related Agreement as Appendix F-2.
22 OMEGA JV6 shall, absent bad faith by such trustees, pay for all expenses and liabilities relating
23 to their status as trustees and all actions taken or alleged inaction as trustees and shall provide

adequate insurance regarding the same.

**SECTION 4. ACQUISITION, CONSTRUCTION AND EQUIPPING OF
PROJECT; FINANCING; OPERATION AND MANAGEMENT**

(A) The Participants agree jointly to undertake, or cause to be undertaken, as either Financing Participants or Non-Financing Participants, respectively, and as either Owner Participants or Purchaser Participants, respectively, in the manner specified in Section 3(A) the acquisition, construction and equipping of the Project, including the acquisition, construction and equipping, without bid, of such portions of the Project and including any planning or engineering studies related thereto, as have been acquired, constructed and equipped by AMP-Ohio prior to the Closing Date, and to pay or incur the costs of the same in accordance with this Joint Venture Agreement.

(B) Each Participant shall use its best efforts to deliver to OMEGA JV6, on or before the Closing Date, an amount equal to its Project Share (computed in accordance with Section 4(D)) of the Project Costs. Financing Participants shall satisfy the requirements of the previous sentence by executing and complying with the terms of the Financing Agreement. Non-Financing Participants shall meet such obligation by delivering to or at the direction of OMEGA JV6 cash under the Trust Indenture ("Contribution"). OMEGA JV6, or AMP-Ohio on its behalf, shall endeavor to give the Participants at least thirty (30) days' notice of the anticipated Closing Date. Each Non-Financing Participant shall arrange, as directed by AMP-Ohio, for its Contribution to be delivered, not later than two (2) business days prior to the Closing Date, to the Trustee to be held in escrow for credit to the Acquisition Fund under, and application on the Closing Date in accordance with, the Trust Indenture.

(C) OMEGA JV6, or AMP-Ohio on its behalf, shall provide each Participant an estimate of Project Costs and each Participant's Project Share thereof, at least thirty (30) days

1 before the Closing Date. OMEGA JV6 shall provide each Participant a further estimate of the
2 Project Costs, and each Participant's Project Share thereof, at least ten (10) days before such
3 Closing Date.

4 (D) Based on such final estimate, each Financing Participant, jointly with all the other
5 Financing Participants, from the proceeds of the Bonds, and each Non-Financing Participant
6 severally from the escrow of its Contribution, will be responsible for making the deposit in the
7 Acquisition Fund with the Trustee on the Closing Date of their respective Project Shares of the
8 final estimates of Project Costs; *provided, however*, that in the event that for any reason
9 whatsoever any Participant or Participants shall fail to make the deposit on the Closing Date as
10 required, no such Participant, absent bad faith on the part of the Participant, that shall fail to
11 make such deposit shall be liable for damages therefor.

12 (E) In the event that for whatever reason the sum of the net proceeds of the Bonds, the
13 Contributions and any other available moneys credited to the Acquisition Fund shall be
14 determined by OMEGA JV6 to be less than required to acquire and place all of the facilities
15 comprising Project in service ("Shortfall"), OMEGA JV6 may determine, subject to and in
16 accordance with the Financing Agreement, (x) to revise the plans and specifications or the scope
17 of the Project so as not to exceed the funds available to pay Project Costs or (y) to obtain the
18 funds necessary to cure the Shortfall in which case OMEGA JV6 shall have the options (i) to
19 withdraw moneys from the appropriate subfunds in the Reserve and Contingency Fund, (ii) to
20 bill Participants for their respective shares of the estimated Shortfall, (iii) to require the
21 Financing Participants jointly and the Non-Financing Participants severally to finance their
22 respective shares of the estimated Shortfall, or (iv) to utilize a combination of the methods
23 described in (i), (ii), and (iii).

1 (F) There shall be created by OMEGA JV6 a Reserve and Contingency Fund,
2 consisting of, at a minimum, three separate sub-funds. The first shall be an overhaul sub-fund in
3 which a reasonable portion of Revenue Requirements shall be set aside for periodic overhauls of
4 the Project in accordance with Prudent Utility Practice ("Overhaul Sub-Fund"). Additional
5 reasonable reserves shall also be collected in Revenue Requirements and set aside for other
6 contingencies in two additional contingency sub-funds, one funded solely from an allocation of
7 Revenue Requirements attributable solely to Financing Participants and one funded solely from
8 an allocation of Revenue Requirements attributable solely to Non-Financing Participants. The
9 total amount to be contained in the latter two contingency sub-funds shall be no less than fifty
10 thousand dollars (\$50,000). To the extent such sub-funds total less than fifty thousand dollars
11 (\$50,000), there shall be ratable contributions to such funds such that they shall be fully funded
12 within twelve (12) months of any deficiency. The trustee under the Trust Indenture may, under
13 the provisions of the Financing Agreement, demand that OMEGA JV6 make withdrawals from
14 the contingency sub-fund in the Reserve and Contingency Fund established for the Financing
15 Participants for application as provided in Section 3.03(d) of the Trust Indenture. OMEGA JV6
16 shall deposit to the credit of such contingency sub-funds amounts to be credited thereto pursuant
17 to the provisions of Section 12(B) hereof.

18 (G) To achieve the efficient management and operation of the Project, the Participants
19 hereby authorize the execution, or approve the continuation by AMP-Ohio, of such Related
20 Agreements as are set forth in Appendix F for the management of the Project and business of
21 OMEGA JV6 and such other agreements and any supplements, modifications, renewals or
22 replacements to the same as OMEGA JV6 deems necessary or convenient to carry out the
23 purposes of this Joint Venture Agreement; *provided, however*, that, if required by the Financing

1 Agreement, such Related Agreements and any supplements, modifications, renewals or
2 replacements to the same, shall: (i) meet all the requirements of the Internal Revenue Code of
3 1986, as amended, as well as applicable Internal Revenue Service rulings, regulations and
4 procedures in order to assure that the Project will not be considered to be used in the trade or
5 business of any person other than a governmental unit; and (ii) meet all requirements of any
6 required licenses or permits. OMEGA JV6 may also employ, on such terms and conditions as it
7 deems appropriate, special legal counsel or other employees or experts as may be necessary or
8 convenient for the furtherance of the business of OMEGA JV6. The organization and structure
9 of OMEGA JV6 shall be as provided in the Regulations.

10 (H) If at any time any Participant has Project Power or renewable or green attributes
11 or like environmental credits in excess of its needs, it may request OMEGA JV6, acting on
12 behalf of such Participant, to make available or sell and deliver any or all of said Participant's
13 Project Share of the same and OMEGA JV6 shall attempt to sell such surplus to any entity on
14 such terms and for such period as OMEGA JV6 deems appropriate, after consultation with said
15 Participant, and as OMEGA JV6 deems not adverse to the tax or regulatory status or other
16 interests of the Participant, the other Participants and OMEGA JV6. All revenues received by
17 OMEGA JV6 from any such sales shall be credited to the account of such Participant; *provided,*
18 *however,* that nothing contained herein, except to the extent revenues are actually received by
19 OMEGA JV6 for such sales hereunder, shall relieve such Participant from any obligation
20 hereunder, and; *provided further, however,* that the emergency use by a Participant to whose
21 electric system a portion of the Project's generating facilities are connected shall be in
22 accordance with agreements between OMEGA JV6 and such Participant. The initial sale of such
23 attributes shall continue by AMP-Ohio as agent for OMEGA JV6, pursuant to the Energy

1 Attributes Agreement, attached hereto as Appendix F-3, and OMEGA JV6 recognizes and
2 approves that such agreement may require that the Project be named pursuant to such agreement
3 and also approves AMP-Ohio's retention of the \$1.00 per MWh marketing fee thereunder. The
4 balance of the income and obligations to provide green or renewable attributes or Project Power
5 thereunder shall be assigned to OMEGA JV6

6 (I) Upon the unanimous approval of all Participants, provided that no Participant's
7 Project Share in kilowatts exceeds the maximum amount approved in legislation authorizing
8 participation in OMEGA JV6 or subsequent legislation increasing such amount adopted by the
9 Utility Governing Body, OMEGA JV6 may add additional wind turbines to the Project. Each
10 Participant shall provide its Project Share (computed in accordance with Section 4(D)) of the
11 Project Costs of the additional wind turbines in accordance with Section 4(B). Upon such
12 approval, appropriate changes to Appendices A, B, C, and D shall be made to reflect the same.

13 **SECTION 5. ALLOCATION OF COSTS, CHARGES; PAYMENT**

14 (A) OMEGA JV6 acting on behalf of the Participants shall establish and maintain,
15 and each Participant, severally and not jointly, agrees to pay, the sum of (i) charges reflecting the
16 costs associated with such Participant's respective Project Share and (ii) charges reflecting
17 availability to and usage by or on behalf of such Participant of Project Power and the contractual
18 rights and operating arrangements necessary or desirable to make Project Power available for
19 delivery at the Point of Availability, all as set forth herein and in the Charge Appendix and
20 included in the Participant's Project Share of Revenue Requirements. Such charges shall, in the
21 aggregate, provide revenues which are sufficient, but only sufficient, to meet the estimated
22 Revenue Requirements. "Revenue Requirements" shall be the sum of Operating Expenses and
23 Other Required Payments.

1 (B) The initial Charge Appendix is attached as Appendix B. At such intervals as it
2 shall determine appropriate, OMEGA JV6 shall review and, if necessary, shall revise the Charge
3 Appendix to ensure that the charges under this Joint Venture Agreement continue to (i) recover
4 OMEGA JV6's estimate of the Revenue Requirements, (ii) represent an appropriate allocation of
5 the Revenue Requirements among the Participants in accordance with the provisions of (A)(i)
6 and (ii) of this Section 5 and (iii) recognize other factors or changes in service conditions as
7 determined appropriate by OMEGA JV6. OMEGA JV6 shall mail to each Participant a copy of
8 the revised Charge Appendix, setting forth the effective date thereof. Each Participant agrees
9 that the revised Charge Appendix, as determined from time to time by OMEGA JV6 in
10 accordance with this Section 5, shall be deemed to be substituted for the Charge Appendix
11 previously in effect and agrees to pay the charges thereunder in accordance with such revised
12 Charge Appendix. Unless otherwise determined by OMEGA JV6, the Charge Appendix shall
13 include charges (i) consisting of (a) a demand charge, which shall be principally designed to
14 recover fixed costs (including any fixed costs of applicable Transmission Service not included in
15 (ii)); and (b) an energy charge, which shall be designed principally to recover the variable costs
16 of providing Project Power and delivery thereof net of any revenues related to the sale of green
17 or renewable energy attributes or like credits or revenues; and (ii) reflecting such other factors
18 relating any individual Participant's distinct costs, such as costs associated with Transmission
19 Service in the control area in which Project Power is delivered, and costs incurred for reactive
20 power requirements as set forth in Section 10. The determination of the energy charge each
21 Month shall be made by appropriate officials or agents designated by OMEGA JV6.
22 Accordingly, formal action by the OMEGA JV6 Board of Participants to approve the energy
23 charge so determined each Month shall not be required.

1 (C) On or before the 15th day of each Month following the Month in which the
2 Closing Date occurs, OMEGA JV6 shall render to each Participant a Monthly invoice showing
3 the amount payable by such Participant pursuant to the Charge Appendix in respect of OMEGA
4 JV6's Revenue Requirements for the immediately preceding Month, and such Participant shall
5 pay such amount to OMEGA JV6 at its principal office, or to such other person at such other
6 address as shall be designated by OMEGA JV6 by written notice to each Participant, at such
7 time and in such manner as shall provide to OMEGA JV6 funds available for use by OMEGA
8 JV6 on the first banking day following the 15th day after the date of the Monthly invoice but not
9 before the twenty-fifth day of the Month in which the invoice is rendered. In rendering such
10 Monthly invoices OMEGA JV6 may utilize estimated data which shall be reconciled as soon as
11 practicable after actual data becomes available. Upon request, OMEGA JV6 shall provide a
12 detailed breakdown of the invoiced amount.

13 (D) In order to provide a reasonable initial amount of operating funds to OMEGA JV6
14 and notwithstanding any other provision of this Section 5, OMEGA JV6 may render each
15 Participant, and each Participant shall pay, an initial invoice representing such Participant's share
16 of working capital for Operating Expenses in proportion to each Participant's Project Share.
17 Such invoices shall be paid in the same manner as other invoices under this Joint Venture
18 Agreement.

19 (E) If any Participant does not make a required payment hereunder in full in funds
20 available for use by OMEGA JV6 on or before the close of business on the due date thereof, a
21 delayed-payment charge on the unpaid amount due for each day overdue will be imposed, in
22 addition to any other remedy or penalty permitted by this Joint Venture Agreement or by law, at
23 the "applicable average prime rate" from said due date to the date of payment. The applicable

1 average prime rate for each Month, or any part thereof, shall be the arithmetic mean, to the
2 nearest one-hundredth of one percent, of the prime rate values published in the Federal Reserve
3 Bulletin for the fourth, third and second Months preceding the due date, or the maximum rate
4 lawfully payable by such Participant pursuant to Federal or Ohio law (or municipal charter, if
5 applicable), whichever is less, together with any damages or losses that are incurred by any other
6 Participant or OMEGA JV6 during such Month as a result of such failure to make timely
7 payment and that are not compensated by such delayed-payment charge. The interest required to
8 be paid hereunder shall be compounded Monthly.

9 (F) In the event of any dispute by any Participant as to any portion of any Monthly
10 invoice, such Participant shall nevertheless pay the full amount of the Monthly invoice, including
11 the disputed charges, when due and shall give written notice of the dispute to OMEGA JV6 not
12 later than ninety (90) days from the date such payment was due. Such notice shall identify the
13 disputed invoice, state the amount in dispute and set forth a full explanation of the grounds on
14 which such dispute is based. No adjustment need be considered or made for disputed charges
15 unless notice is given as aforesaid. OMEGA JV6 shall give consideration to such dispute and
16 shall advise such Participant with regard to its position relative thereto within sixty (60) days
17 following receipt of such written notice. Upon final determination (whether by agreement,
18 arbitration, adjudication or otherwise) of the correct amount, any difference between such correct
19 amount and such full amount, together with interest (from the date of the disputed payment to the
20 due date of the Monthly invoice next submitted to the Participant after such determination) at the
21 rate which would apply under this Joint Venture Agreement to overdue payments by such
22 Participant pursuant to Section 5(E), shall be subtracted by OMEGA JV6 from the invoice next
23 submitted to such Participant after such determination or paid by OMEGA JV6 to the Participant

1 in funds available for use by the Participant on the due date of such next Monthly invoice.

2 (G) In the event that at any time OMEGA JV6 shall determine that it has rendered a
3 Monthly invoice containing a billing error, OMEGA JV6 shall furnish promptly to each
4 Participant whose Monthly invoice was in error a revised Monthly invoice with the error
5 corrected which shall be subject to the same payment provisions of this Joint Venture Agreement
6 as are applicable to the original Monthly invoice. The revised invoice shall establish a new
7 payment date for the Monthly invoice and if the Municipality has paid any incorrect amount in
8 excess of the correct amount, such excess shall be promptly refunded. When estimated values
9 are used to invoice hereunder, the resulting invoices shall not be construed as billing errors.
10 Adjustments without interest shall be made on a subsequent Monthly invoice to account for the
11 difference between estimated and actual values as soon as practicable after actual data becomes
12 available.

13 (H) (i) The obligation of each Owner Participant, to make payments under this Joint
14 Venture Agreement for its share of the Operating Expenses component of Revenue
15 Requirements, shall constitute an obligation of such Participant payable as an O&M Expense of
16 its municipal electric utility system, and such payments shall be made as an obligation of
17 ownership of such Participant's Project Share. The obligation of each Owner Participant to
18 make payments for the Other Required Payments components of the Revenue Requirements
19 shall be made as an obligation of ownership and shall constitute an obligation of such Participant
20 payable from the revenues of its municipal electric utility system after provision for the O&M
21 expenses and senior debt service, including, for Financing Participants, payments due under the
22 Financing Agreement, or from any other legally available funds.

23

1 (ii) The obligation of each Purchaser Participant to make payments under this
2 Joint Venture Agreement for its share of the Revenue Requirements shall constitute an obligation
3 of such Participant payable as an O&M Expense of its municipal electric utility system, and such
4 payments shall be made as an obligation contingent only upon Project Power not being
5 Unavailable to the Participant.

6 (iii) No Participant shall be required to expend funds for payments under this
7 Joint Venture Agreement derived from sources other than the revenues of its municipal electric
8 utility system, although nothing herein shall be construed as preventing such Participant from
9 doing so. In no event shall any Participant be required to make payments under this Joint
10 Venture Agreement from tax revenues. Except as otherwise expressly provided herein, as, for
11 example, in Paragraph H(ii) of this Section 5, the obligation of each Participant to make
12 payments under this Joint Venture Agreement shall not be subject to any reduction, whether by
13 offset, counterclaim, or otherwise, and such payment obligations of such Participant shall not be
14 conditioned upon the performance by any other Participant or by OMEGA JV6 of their
15 respective obligations under this Joint Venture Agreement, the Related Agreements or any other
16 agreement; *provided, however*, that nothing contained herein shall be construed to prevent or
17 restrict such Participant from asserting any rights which it may have against OMEGA JV6 under
18 this Joint Venture Agreement or under any provision of law, including institution of legal
19 proceedings for specific performance or recovery of damages.

SECTION 6. SCHEDULING AND DISPATCHING

As the generation of Project Power is dependent upon wind and is neither schedulable nor dispatchable, each Participant shall be entitled to receive each hour, in accordance with Appendix I, an amount of power in kilowatts, equal to the product of its Project Share (percent) and the Project Capacity, as specified on Appendix D. Should conditions change as a result of the factors enumerated in Appendix I, or for other appropriate reasons, OMEGA JV6, on its own, or at the request of any Participant with OMEGA JV6's approval, such approval not to be unreasonably withheld, may modify the scheduling and dispatch protocol set forth herein and on Appendix I, in which case Appendix I shall be modified to reflect the same. The Participants also recognize that the sale of green or renewable attributes, pursuant to the Energy Attributes Agreement, or otherwise, may require delivery of Replacement Power to the Participants in amounts corresponding to the output of the Project.

SECTION 7. ELECTRIC CHARACTERISTICS; POINTS OF AVAILABILITY; MEASUREMENT OF ELECTRIC POWER AND ENERGY FURNISHED

Project Power furnished or made available hereunder shall be alternating current, three (3) phase, sixty (60) Hertz. Project Power scheduled pursuant to this Joint Venture Agreement shall be made available or delivered on each Participant's behalf at the Points of Availability. It is expressly understood that it is the responsibility of each Participant to arrange for any transmission, wheeling or other service necessary to transmit power and energy from the Point of Availability to any other point, including its Point of Delivery, whether through a Related Agreement or otherwise, and failure of any Participant to make such arrangements shall not relieve the Participant from any obligation under this Joint Venture Agreement; *provided, however,* that OMEGA JV6 will assist the Participants or act as their agent for purposes of securing arrangements to transmit Project Power from a Point of Availability to a Point of

1 Delivery. The Points of Delivery as well as points of measurement, delivery voltage and other
2 conditions of service shall be as set forth on Appendix C or as otherwise agreed between
3 OMEGA JV6 and any Participant or as otherwise determined pursuant to policies and procedures
4 adopted by OMEGA JV6, in which case Appendix C shall be modified accordingly. Initial
5 deliveries hereunder shall be consistent with the Energy Attributes Agreement.

6 SECTION 8. METERING 7

8 To the extent necessary, OMEGA JV6 shall install, maintain and operate, or cause to be
9 installed, maintained and operated, any metering equipment, including area interchange metering
10 and telemetering equipment, required to measure the power and energy produced or delivered
11 pursuant to this Joint Venture Agreement. Each Participant agrees to cooperate with OMEGA
12 JV6 as necessary to enable OMEGA JV6 to meet its obligations pursuant to the immediately
13 preceding sentence; *provided, however*, that metering by a Participant to whose electric system a
14 portion of the Project's generating facilities is connected shall be in accordance with any
15 agreement between OMEGA JV6 and such Participant with respect thereto.

16 SECTION 9. RIGHT OF ACCESS 17

18 Duly authorized representatives of OMEGA JV6 shall be permitted to enter any
19 Participant's premises at all reasonable times in order to carry out the provisions of this Joint
20 Venture Agreement, and duly authorized representatives of any Participant shall be permitted to
21 enter OMEGA JV6's premises or any Project sites at all reasonable times in order to carry out the
22 provisions of this Joint Venture Agreement and, with regard to the Project, conduct such
23 inspections as are reasonable under the circumstances.

24 SECTION 10. REACTIVE POWER; POWER FACTOR 25

26 It is understood by the Parties that, unless otherwise agreed in writing, each Participant
27 shall furnish or cause to be furnished, at its own expense, its own reactive power requirements.

1 It is also understood that any availability of power and energy from the Project pursuant to this
2 Joint Venture Agreement may require such Participant to maintain a specific power factor or
3 keep its power factor within a specified range. Unless otherwise agreed in writing, such
4 Participant shall take all steps necessary to maintain the range or specific power factor required.
5 Unless otherwise agreed in writing, OMEGA JV6 may levy a charge to any such Participant
6 equal to OMEGA JV6's cost of obtaining reactive power or power factor correcting equipment if
7 such Participant fails to correct any such problem within a reasonable time of notification by
8 OMEGA JV6 that such a problem exists. It is further understood that should a Participant
9 designate delivery of power and energy hereunder to some other entity, then such Participant is
10 responsible for arranging for such entity to comply with the provisions of this Section 10.

11 SECTION 11. UNCONTROLLABLE FORCES

12
13 Neither OMEGA JV6 nor any Participant shall be considered to be in default in respect
14 of any obligation hereunder (other than the obligation of each Participant to make any payments
15 required by this Joint Venture Agreement for Revenue Requirements or otherwise) if prevented
16 from fulfilling such obligation by reason of Uncontrollable Forces. A party rendered unable to
17 fulfill any such obligation by reason of Uncontrollable Forces shall exercise due diligence to
18 remove such inability with all reasonable dispatch except in no case shall any Party be required
19 by reason of this provision to settle any labor dispute.

20 SECTION 12. INSURANCE

21
22 (A) OMEGA JV6 shall maintain, or cause to be maintained, in force, insurance with
23 responsible insurers with policies payable to OMEGA JV6 on behalf of the Participants, against
24 risk of direct physical loss, damage or destruction, at least to the extent that similar insurance is
25 usually carried by utilities constructing and operating facilities of the nature of the facilities of
26 the Project, including liability insurance, all to the extent available at reasonable cost and subject

1 to reasonable deductible provisions in accordance with Prudent Utility Practice. OMEGA JV6
2 may also maintain such other insurance as it deems reasonable for the benefit of OMEGA JV6
3 and the Participants. To the extent necessary to protect their respective interests, the Participants
4 shall be named additional insured on such policies. Notwithstanding the foregoing, OMEGA
5 JV6 may, to the extent permitted by the Related Agreements, the Financing Agreement, self-
6 insure or participate in a program of self-insurance or group insurance to the extent it receives a
7 written opinion of a qualified insurance consultant that such self-insurance, after consideration of
8 any existing or required reserve deposits, is reasonable.

9 (B) Proceeds of liability insurance shall be applied by OMEGA JV6 to liability in
10 respect of which such proceeds were received. Proceeds of casualty insurance shall, at the
11 option of OMEGA JV6, be deposited in the overhaul subfund of the Reserve and Contingency
12 Fund and applied to repair the damage or to address any other circumstance that resulted in the
13 receipt of such proceeds or, if the unit or other Project asset damaged or affected cannot be
14 repaired or replaced, or such repair or replacement is unwise, in the judgment of OMEGA JV6,
15 taking into account the relative costs, benefits and feasibility of such repair and replacement,
16 OMEGA JV6 may pay, or direct payment of, such casualty insurance proceeds and other sums
17 received on account of such casualty to the credit of the contingency sub-funds in the Reserve
18 and Contingency Fund *pro rata* in accordance with the ratio of the Project Shares of the
19 Financing Participants to the Project Shares of all the Participants and the Project Shares of the
20 Non-Financing Participants to the Project Shares of all the Participants.

21 SECTION 13. ACCOUNTING

22 OMEGA JV6 shall keep accurate records and accounts relating to this Joint Venture
23 Agreement substantially in accordance with the Uniform System of Accounts, separate and
24 distinct from any other records and accounts. Said accounts shall be audited each Year, which
25

1 shall be OMEGA JV6's fiscal year, by a firm of independent certified public accountants,
2 experienced in public finance and electric utility accounting and of favorable reputation, to be
3 employed by OMEGA JV6 and selected in accordance with R.C. §115.56, if applicable.
4 Alternatively, in the event that the Auditor of the State of Ohio performs such an audit, then
5 OMEGA JV6 may utilize such audit in lieu of that provided for above, to the extent allowed by
6 law. A copy of each annual audit along with an annual report of the operations of OMEGA JV6,
7 shall be furnished by OMEGA JV6 to each Participant, AMP-Ohio, and the Auditor of the State
8 of Ohio, and to any other agency required by law, within a reasonable time after the end of each
9 Year, or such other time as is required by law. Each Participant and the Auditor of the State of
10 Ohio shall also be furnished with a copy of any written comments and recommendations
11 associated with such audit. All such audits shall conform to any applicable legal requirements.
12 Each Participant agrees to keep accurate records and accounts relating to the conduct of its
13 municipal electric utility system.

14 SECTION 14. INFORMATION TO BE MADE AVAILABLE

15
16 (A) Upon written request to OMEGA JV6 by any Participant:

17 (i) all drawings, plans, specifications and contracts relating to the planning,
18 engineering, construction and operation of the Project, or otherwise relating to OMEGA JV6,
19 shall be made available at OMEGA JV6's office for examination by the Participant, its agents
20 and representatives *provided, however*, that to the extent permitted by law, any such information
21 designated as proprietary or otherwise inappropriate for public release by OMEGA JV6 shall be
22 treated as such by such Participant;

23 (ii) copies of all operating and financial records and reports relating to the
24 Project in the possession of OMEGA JV6 shall be made available at OMEGA JV6's office for
25 examination by the Participant; and

(iii) copies of insurance policies (or certificates of insurance) carried pursuant to Section 12 shall be provided to the Participant; and

(B) Each Participant shall, upon written request, furnish to OMEGA JV6 all non-privileged and non-proprietary such information, certificates, engineering reports, feasibility reports, financial invoices, opinions of counsel and other documents as shall be reasonably necessary in connection with the performance of OMEGA JV6's or the Participant's obligations under this Joint Venture Agreement.

(C) OMEGA JV6 and each Participant will promptly furnish to each other such other information as may be reasonably requested from time to time in order to carry out the intent and purpose of the Joint Venture Agreement.

SECTION 15. SEPARATE FUNDS; ASSIGNMENT OF INTEREST

All revenues and other funds of OMEGA JV6 shall be separate and apart from all other borrowings, indentures, revenues and funds. Except as provided in this Joint Venture Agreement or in the Financing Agreement, neither OMEGA JV6 nor its agents shall pledge or assign any right, title or interest in, to or under any of the foregoing, or this Joint Venture Agreement or otherwise make available any of the foregoing, to secure or pay any indebtedness or obligation of OMEGA JV6 other than as necessary to carry out the purposes of this Joint Venture Agreement.

SECTION 16. DISPOSITION OR TERMINATION OF THE PROJECT

(A) Except as provided in this Joint Venture Agreement, OMEGA JV6 shall not sell or otherwise dispose of any interest in all or any part of the Project without the approval of a Super Majority; *provided, however*, that OMEGA JV6 may provide for the sale or other disposal of any property or contract rights associated with the Project which is surplus, obsolete or otherwise not required for the operation of the Project and either (i) the original cost of such property in 2003 dollars is less than two hundred fifty thousand dollars (\$250,000), or (ii)

1 OMEGA JV6 receives a certification from a qualified independent engineering consultant that
2 such sale will neither materially adversely affect the operation of the Project nor increase
3 Revenue Requirements, and shall deposit the net proceeds of any such disposition to the credit,
4 *pro rata*, of the appropriate contingency subfunds in the Reserve and Contingency Fund; and,
5 *provided further*, that any sale or other disposition of an entire unit of the Project shall be subject
6 to the prior written consent of the Participant, if any, in which such unit is located.

7 (B) The Project or any part thereof shall be terminated, and OMEGA JV6 shall cause
8 such facilities to be salvaged, discontinued, decommissioned, retired, and disposed of or sold in
9 whole or in part and on such terms as OMEGA JV6 determines to be reasonable and appropriate,
10 when:

11 (i) OMEGA JV6 determines that it is unable to operate such facilities due to
12 permitting, licensing or operating conditions or other causes which are beyond its control; or

13 (ii) OMEGA JV6 determines that such facilities are not capable of
14 economically delivering energy consistent with Prudent Utility Practice or it is not in the
15 economic interest of the Participants to maintain the facilities; or

16 (iii) OMEGA JV6 determines to do so.

17 (C) Any excess of funds created by such sale, after the provision for payment of all
18 Operating Expenses or other payment obligations of OMEGA JV6 and the retirement or
19 defeasance of all outstanding Bonds in accordance with the Trust Indenture, shall be refunded to
20 the Non-Financing Participants in proportion to each such Participant's Project Share and to
21 Financing Participants first by credit against each such Financing Participant's respective
22 obligations under the Financing Agreement in accordance with the provisions thereof, to the
23 extent such obligations shall have not been satisfied, and then refunded to such Financing

1 Participants in proportion to each such Financing Participant's Project Share.

2 (D) Any other excess funds held pursuant to the terms of this Joint Venture Agreement
3 on the date of termination hereof shall be paid to the Participants in proportion to their respective
4 Project Shares.

5 **SECTION 17. ADDITIONAL COVENANTS OF PARTICIPANTS**
6

7 (A) Each Participant covenants and agrees that it shall not sell, lease or otherwise
8 dispose of all or substantially all of its municipal electric utility distribution system except on no
9 less than one hundred-eighty (180) days' prior written notice to OMEGA JV6 and, in any event,
10 shall not so sell, lease or otherwise dispose of the same unless OMEGA JV6 shall reasonably
11 determine that all of the following conditions are met: (i) such Participant shall assign its
12 ownership interest in the Project and this Joint Venture Agreement and its rights hereunder in
13 writing to the purchaser or lessee of the municipal electric utility distribution system and such
14 purchaser or lessee, as assignee of rights and obligations of such Participant under this Joint
15 Venture Agreement, shall assume in writing all obligations (except to the extent theretofore
16 discharged or, otherwise provided for in a manner acceptable to the other Participants) of such
17 Participant under this Joint Venture Agreement; (ii) if and to the extent necessary to reflect such
18 assignment and assumption, OMEGA JV6 or the remaining Participants and such assignee shall
19 enter into an agreement supplemental to this Joint Venture Agreement to clarify the terms on
20 which such assignee shall exercise its ownership rights and obligations hereunder; (iii) such
21 assignment will not materially adversely affect the security afforded by the provisions of this
22 Joint Venture Agreement for payment of Revenue Requirements hereunder; and (iv) OMEGA
23 JV6 shall have received an opinion or opinions of counsel of recognized standing selected by
24 OMEGA JV6 stating that such assignment: (a) is lawful; (b) will not adversely affect OMEGA
25 JV6's tax or regulatory status; (c) will not adversely affect the remaining Participants' rights; and

1 (d) will not adversely affect the legality of this Joint Venture Agreement or the activities
2 contemplated hereunder. Notwithstanding the foregoing, if OMEGA JV6 reasonably determines
3 that the assignment of this Joint Venture Agreement, pursuant to the immediately preceding
4 sentence in connection with the sale, lease or other disposition of a Participant's municipal
5 electric utility distribution system, could reasonably be expected to result in any increase in the
6 Revenue Requirements to be charged to any of the remaining Participants under this Joint
7 Venture Agreement, OMEGA JV6 may, by delivery of written notice thereof no later than one
8 hundred-twenty (120) days following receipt by OMEGA JV6 of notice pursuant to the
9 immediately preceding sentence, refuse to approve such sale, lease or other disposition and,
10 effective upon such sale, lease or other disposition, should such disposition nonetheless occur,
11 terminate all of such Participant's rights and obligations under this Joint Venture Agreement
12 (except to the extent of any obligations theretofore accrued); *provided, however*, that prior to the
13 effective date of any such termination OMEGA JV6 shall have arranged for the assignment by
14 such Participant of its rights and obligations (except to the extent theretofore discharged or
15 otherwise provided for in a manner acceptable to the other Participants) hereunder to another
16 entity which assumes in writing all obligations of such Participant hereunder (except to the
17 extent theretofore discharged or otherwise provided for in a manner acceptable to the other
18 Participants) and which satisfies each of the conditions set forth in Clauses (ii) through (iv) of
19 this Section 17(A); *provided, further*, that nothing contained in this Section 17(A) shall be
20 construed to prevent or restrict any Participant from issuing or leaving outstanding revenue
21 bonds and mortgage revenue bonds for purposes other than the Project (subject to the provisions
22 of Section 17(G)), secured by a mortgage of the property, excluding any ownership or other
23 interest in the Project, or revenues of such Participant's electric utility system, including a

1 franchise, in accordance with Article XVIII, Section 12 of the Constitution of the State of Ohio.
2 Each Participant agrees to cooperate in effecting any assignment pursuant to the immediately
3 preceding sentence.

4 (B) Each Participant covenants and agrees that it shall take no action the effect of
5 which would be to prevent, hinder or delay OMEGA JV6 or any other Participant from the
6 timely fulfillment of its obligations under this Joint Venture Agreement, any Related Agreement,
7 the Financing Agreement or any required licenses or permits; *provided, however*, that nothing
8 contained herein shall be construed to prevent or restrict such Participant from asserting any
9 rights which it may have against OMEGA JV6 or any other Participant hereunder or under any
10 provision of law, including institution of legal proceedings for specific performance or recovery
11 of damages, or as a covenant not to compete.

12 (C) Each Participant covenants and agrees that it shall, in accordance with Prudent
13 Utility Practice, operate the properties of its municipal electric utility distribution system and the
14 business in connection therewith in an efficient manner, and maintain its municipal electric
15 utility distribution system in good repair, working order and condition; *provided, however*, that
16 this covenant shall not be construed as requiring such Participant to expend any funds which are
17 derived from sources other than the revenues of its municipal electric utility system, although
18 nothing herein shall be construed as preventing such Participant from doing so.

19 (D) Each Participant covenants and agrees that it shall not issue bonds, notes or other
20 evidences of indebtedness or incur lease or contractual obligations which are payable from the
21 revenues derived from its municipal electric utility system superior to the payment of the O&M
22 Expenses of its municipal electric utility system; *provided, however*, that nothing herein shall
23 limit such Participant's present or future right to incur lease or contractual obligations which are

1 payable on a parity with O&M Expenses; or issue bonds, notes or other evidences of
2 indebtedness payable from revenues subject to only to the prior payment or provision for the
3 payment of O&M Expenses of its municipal electric utility system.

4 (E) Each Participant covenants and agrees to use all reasonable efforts to take all
5 lawful actions necessary or convenient to fulfill all of its obligations under this Joint Venture
6 Agreement.

7 (F) Each Participant covenants and agrees that it shall make available any and all of
8 its rights-of-way on a reasonable basis for the use of OMEGA JV6 to the extent the same can be
9 reasonably accommodated and are necessary or convenient in furtherance of the obligations and
10 business of OMEGA JV6 hereunder and shall cooperate, including the exercise of its powers of
11 appropriation and condemnation, with OMEGA JV6 and the other Participants to acquire any
12 and all property necessary for the proper and efficient operation of the Project and delivery of
13 Project Power to or for the benefit of the Participants.

14 (G) Each Participant covenants and agrees that it shall not mortgage or take, or fail to
15 take, any other action which would create or result in any lien or other security interest in the
16 Project.

17 (H) Each Purchasing Participant covenants and agrees that it will in good faith, but
18 only to the extent the same is reasonable in such Purchasing Participant's sole discretion taking
19 into account the totality of the circumstances, endeavor to remove any legal and practical
20 impediments to its becoming an Owner Participant at the earliest possible time.

21 SECTION 18. DEFAULT

22 (A) In the event (I) any payment due from any Participant under this Joint Venture
23 Agreement remains unpaid subsequent to the due date thereof or (II) OMEGA JV6 is notified by
24 AMP-Ohio that a default has occurred under the Financing Agreement and is continuing, such
25

1 event shall constitute a default hereunder and OMEGA JV6 may, and in the case of a default by
2 a Financing Participant, may, and if so directed by AMP-Ohio, shall, upon fifteen (15) days'
3 written notice to and at the cost and expense of such defaulting Participant, (i) withhold any
4 payments otherwise due such Participant and suspend deliveries or availability of Project Power
5 to or on behalf of the defaulting Participant under this Joint Venture Agreement, (ii) bring any
6 suit, action or proceeding at law or in equity as may be necessary or appropriate to enforce any
7 covenant, agreement or obligation against the defaulting Participant, or (iii) take any other action
8 permitted by law to enforce this Joint Venture Agreement. Upon suspension of the rights of the
9 defaulting Participant as provided in the immediately preceding sentence, OMEGA JV6 shall be
10 entitled to and may, and in the case of a default by a Financing Participant, if so directed by
11 AMP-Ohio, shall, sell or make available, from time to time, to any other person or persons any
12 Project Power associated with the defaulting Participant's Project Share of Project Capacity, and
13 any such sale or sales may be on such terms and for such period deemed necessary or convenient
14 in OMEGA JV6's judgment, which shall not be exercised unreasonably, to accomplish such sales
15 under then existing market conditions; *provided, however*, that no such sale shall be made for a
16 period exceeding two months. Any such sale of such Project Power contracted for by OMEGA
17 JV6 under this Section 18(A) shall not relieve the defaulting Participant from any liability under
18 this Joint Venture Agreement or the defaulting Financing Participant from any liability under the
19 Financing Agreement, except that the net proceeds of such sale shall be applied in reduction of
20 the liability (but not below zero) of such defaulting Participant under this Joint Venture
21 Agreement and, in the case of a Financing Participant, under the Financing Agreement. When
22 any default giving rise to the suspension of delivery of power and energy has been cured in less
23 than sixty (60) days subsequent to such default and payment has been made by the defaulting

1 Participant to OMEGA JV6, and if a Financing Participant to AMP-Ohio, of all costs and
2 expenses incurred as a result of such default, the Participant which had been in default shall be
3 entitled to a resumption of delivery of Project Power or other service pursuant under this Joint
4 Venture Agreement, subject to any sales of Project Power to others entered into by OMEGA JV6
5 pursuant to this Section 18(A). OMEGA JV6 shall promptly notify all Participants in writing of
6 any default by any other Participant which remains uncured for thirty (30) days or more.

7 (B) If any Participant shall be in default under this Joint Venture Agreement, whether
8 under the terms of Section 18(A) or otherwise, and such default continues for sixty (60) days or
9 more without reasonable and effective efforts by said Participant to cure such default, OMEGA
10 JV6 may, in addition to any other remedy available at law or equity, terminate the provisions of
11 this Joint Venture Agreement insofar as the same entitle the Participant to Project Power;
12 however, the obligations of the Participant under this Joint Venture Agreement shall continue in
13 full force and effect. OMEGA JV6 shall forthwith notify such Participant of such termination.
14 If the defaulting Participant is a Financing Participant, OMEGA JV6 shall so terminate the Joint
15 Venture Agreement as to the defaulting Participant only if so directed by AMP-Ohio. OMEGA
16 JV6 shall pursue, as to a defaulting Financing Participant, any remedy described in this Section
17 18(B) in cooperation with AMP-Ohio so as not to interfere with AMP-Ohio's exercise of its
18 remedies under Section 12(B) of the Financing Agreement.

19 (C) The net proceeds of any sales described in Section 18 (A) and all other amounts
20 realized by OMEGA JV6 in enforcing the provisions of this Joint Venture Agreement shall be
21 applied first to the payment or reimbursement of all costs and expenses of OMEGA JV6 and
22 AMP-Ohio in such enforcement, second to the payment of any amounts due to OMEGA JV6 in
23 respect of its Operating Expenses, third, in the case of a Financing Participant, to the payment to

1 AMP-Ohio of all amounts due and payable by the defaulting Participant, and fourth to the
2 payment to OMEGA JV6 of all other amounts due by the defaulting Participant under this Joint
3 Venture Agreement. Any balance shall be transferred to the Overhaul Subfund of the Reserve
4 and Contingency Fund.

5 **SECTION 19. WAIVER**
6

7 Any waiver at any time by any Party of its rights hereunder with respect to any default of
8 any other Party thereto, or with respect to any other matter arising in connection with this Joint
9 Venture Agreement, shall not be considered a waiver with respect to any subsequent default,
10 right or matter.

11 **SECTION 20. RELATIONSHIP TO AND COMPLIANCE WITH OTHER**
12 **INSTRUMENTS**
13

14 It is recognized by the Participants that OMEGA JV6 in undertaking, or causing to be
15 undertaken, the planning, financing, construction, refurbishment, acquisition, operation and
16 maintenance of the Project must comply with the requirements of the Financing Agreement, the
17 Related Agreements, and all applicable licenses, permits and regulatory approvals necessary for
18 such planning, financing, siting, construction, refurbishment, acquisition, operation and
19 maintenance, and it is therefore agreed that this Joint Venture Agreement should be construed in
20 a manner consistent with compliance with the provisions of the Financing Agreement and all
21 such other licenses, permits, and regulatory approvals.

22 **SECTION 21. MODIFICATION OR AMENDMENT OF THIS JOINT VENTURE**
23 **AGREEMENT**
24

25 Except to the extent otherwise provided herein with respect to supplements, amendments
26 and modifications in the Appendices, and supplemental agreements entered into pursuant to
27 Section 4(G), Section 17(A), Section 27(B) and Section 32(B), this Joint Venture Agreement
28 shall not be amended, modified or otherwise changed except by written instrument executed and

1 delivered by each of the Participants; *provided, however*, that this Joint Venture Agreement shall
2 not in any event be amended, modified or otherwise changed in any manner that will materially
3 adversely affect the security afforded by the provisions of the Financing Agreement; and,
4 *provided further*, that so long as any obligation of any Financing Participant is outstanding under
5 the Financing Agreement, no amendment of this Joint Venture Agreement that materially and
6 adversely affects the operation of the Project or its revenues shall be effective without the written
7 consent of AMP-Ohio.

8 SECTION 22. OPINIONS AS TO VALIDITY

9 Each Participant, upon execution and delivery of this Joint Venture Agreement, shall
10 furnish to OMEGA JV6 an opinion, substantially in the form of Appendix H, of counsel retained
11 or employed by such Participant and licensed to practice law in Ohio. Upon request by OMEGA
12 JV6, on the Closing Date, each Participant shall furnish OMEGA JV6 with a letter from the
13 attorney or firm of attorneys which rendered the foregoing opinion confirming, as of the date
14 specified in such request, the foregoing opinion delivered upon execution and delivery of this
15 Joint Venture Agreement and permitting any trustee, underwriter or other purchaser of Bonds
16 issued pursuant to the Financing Agreement or any placement agent to rely upon any such
17 opinion as if addressed to such person.

18 SECTION 23. MUNICIPAL OPERATION.

19 (A) OMEGA JV6, being a joint venture of municipal corporations, shall, from time to
20 time as appropriate, adopt by resolution of its Board procedures requiring that, to the extent
21 required by law and to the extent practicable, OMEGA JV6 shall conduct its business and
22 operations in accordance with the following general provisions of Ohio law governing the
23 operation of municipalities:

1 (i) the provisions of R.C. Chapter 735 requiring competitive bidding in the
2 acquisition of certain goods and services;

3 (ii) the provisions of R.C. §731.55, et seq. and R.C. Chapter 135 regarding
4 public funds; and

5 (iii) such other provisions of Ohio law with which OMEGA JV6 may be
6 required to conform or with which OMEGA JV6 deems it appropriate to comply.

7 (B) Notwithstanding any other provisions of this Agreement:

8 (i) OMEGA JV6 and the Participants waive competitive bidding in the
9 acquisition of any Project facilities set forth on Appendix L that were constructed or acquired by
10 AMP-Ohio, or any Participant, prior to such acquisition as well as any additional turbines added
11 to the Project that are acquired pursuant to the terms hereof and pursuant to AMP-Ohio's
12 Request for Proposals under which the Project's initial turbines were provided; and

13 (ii) Upon a finding by OMEGA JV6 of emergency threatening the public,
14 health, safety or welfare as it relates to the Project or in other appropriate circumstances,
15 OMEGA JV6 may waive competitive bidding in appropriate circumstances.

16 **SECTION 24. NOTICES AND COMPUTATION OF TIME**

17 Any notice or demand by any Participant to OMEGA JV6 under this Joint Venture
18 Agreement shall be deemed properly given if mailed postage prepaid and addressed to OMEGA
19 JV6 at the address set forth on Appendix J. Any notice or demand by OMEGA JV6 to any
20 Participant under this Joint Venture Agreement shall be deemed properly given if mailed postage
21 prepaid and addressed to the Participant at the address set forth on Appendix J. In computing
22 any period of time from any such notice, such period shall commence at noon on the date mailed.
23 The designations of the name and address to which any such notice or demand is directed may be

1 changed at any time and from time to time by any Participant's giving notice to OMEGA JV6
2 and all Participants or OMEGA JV6's giving notice to all Participants, as appropriate, as above
3 provided, at which time Appendix J shall be revised to reflect such change.

4 SECTION 25. APPLICABLE LAW; CONSTRUCTION

5 This Joint Venture Agreement is made under and shall be governed by the law of the
6 State of Ohio. Headings herein are for convenience only and shall not influence the construction
7 hereof. In the event of any conflict between the provisions contained in Sections 1 through 36,
8 inclusive, of this Joint Venture Agreement and any of the Appendices (excepting Appendices F-
9 2, G and M) , the appropriate provisions of Sections 1 through 36 shall govern.

10 SECTION 26. SEVERABILITY

11 If any Section, Subsection, Paragraph, Clause or provision or any part thereof of this
12 Joint Venture Agreement shall be finally adjudicated by a court of competent jurisdiction to be
13 invalid, the remainder of this Joint Venture Agreement shall be unaffected by such adjudication
14 and all the remaining provisions of this Joint Venture Agreement shall remain in full force and
15 effect as though such Section, Subsection, Paragraph, Clause or provision or any part thereof so
16 adjudicated to be invalid had not, to the extent of such invalidity, been included herein and the
17 Joint Venture Agreement then interpreted to reflect the intention of the parties to the greatest
18 extent permitted by law.

19 SECTION 27. ASSIGNMENT OF JOINT VENTURE AGREEMENT

20 (A) This Joint Venture Agreement shall inure to the benefit of and shall be binding
21 upon the respective successors and assigns of the Parties to this Joint Venture Agreement;
22 *provided, however*, that (i) neither this Joint Venture Agreement nor any interest herein or,
23 except as otherwise permitted herein, in the Project, shall be transferred or assigned by OMEGA

1 JV6 except with the consent in writing of each Participant, which consent shall not be
2 unreasonably withheld, and (ii) except for an assignment by a Participant with the consent of
3 OMEGA JV6 in accordance with Subsection (B) of this Section 27 or an assignment in
4 connection with the sale, lease or other disposition of all or substantially all of a Participant's
5 municipal electric utility distribution system as provided in Section 17(A) hereof, neither this
6 Joint Venture Agreement nor any interest herein or the Project shall be transferred or assigned by
7 any Participant.

8 (B) A Participant may assign to any entity this Joint Venture Agreement and its rights
9 hereunder including its ownership or other interest in the Project if all of the following
10 conditions are met: (i) OMEGA JV6 consents in writing to such assignment, which consent shall
11 not be unreasonably withheld; (ii) the assignment shall be evidenced by a written instrument
12 pursuant to which the assignee shall assume all obligations (except to the extent theretofore
13 discharged or otherwise provided for in a manner acceptable to the other Participants) of such
14 Participant under this Joint Venture Agreement; (iii) if and to the extent necessary to reflect such
15 assignment and assumption, OMEGA JV6 and such assignee shall enter into an agreement
16 supplemental to this Joint Venture Agreement to clarify the terms on which power and energy
17 from such ownership share are to be delivered hereunder by OMEGA JV6 to such assignee; (iv)
18 such assignment (a) does not require any modification to any Project licenses or permits by any
19 governmental entities with jurisdiction thereof or (b) any such modifications are duly approved;
20 and (v) OMEGA JV6 shall have received an opinion or opinions of counsel of recognized
21 standing selected by OMEGA JV6 stating that such assignment: (a) is lawful; (b) will not
22 adversely affect OMEGA JV6's tax or regulatory status; (c) will not adversely affect the
23 remaining Participants' ownership or other rights; (d) will not adversely affect the legality of this

1 Joint Venture Agreement or the activities contemplated hereunder; and (e) either will not require
2 approval by any regulatory body or all such approvals have been duly obtained. OMEGA JV6
3 shall not consent to the assignment of this Joint Venture Agreement pursuant to the immediately
4 preceding sentence unless OMEGA JV6 reasonably determines that such assignment is not
5 expected to result in any increase in the charges to any of the remaining Participants under this
6 Joint Venture Agreement. Nothing contained in this Section 27(B) shall be construed to prevent
7 or restrict any Participant from issuing or leaving outstanding revenue bonds and mortgage
8 revenue bonds, subject to the provisions of Section 17(G), secured by the revenues, or the
9 revenues and a mortgage of the property, of such Participant's electric utility system, including a
10 franchise, in accordance with Article XVIII, Section 12 of the Constitution of the State of Ohio
11 so long as such Participant does not mortgage or otherwise subject its ownership interest in the
12 Project to any liens created thereby.

13 (C) It is the paramount goal of the Participants that their joint venture, OMEGA JV6,
14 having been created validly, continue to exist validly, under the laws of the State of Ohio. To
15 that end and notwithstanding any other provision of this Joint Venture Agreement, each
16 Participant agrees that any default by such Participant under any bonds or other evidence of
17 indebtedness that gives rise to any sale, assignment, lease, conveyance, transfer or other
18 disposition of any interest of such Participant under this Joint Venture Agreement or in or to its
19 Project Share or the Project, whether by such Participant or any third party acting on behalf of
20 such Participant or any trustee (other than the trustee under the Trust Indenture), receiver or other
21 fiduciary purporting to act on behalf of creditors of such Participant or its municipal electric
22 distribution system constitutes a default hereunder. Such default shall be without the opportunity
23 to cure as provided in Section 18 if the sale, assignment, lease, conveyance, transfer or other

1 disposition on account of the defaulting Participant, in the opinion of counsel to OMEGA JV6,
2 could result in OMEGA JV6 ceasing to exist as a valid joint venture under the laws of Ohio.

3 **SECTION 28. BENEFICIARIES**

4 (A) Subject to the provisions of Section 33, this Joint Venture Agreement shall
5 constitute a binding agreement of each Participant with each other Participant and OMEGA JV6,
6 for the benefit of the Participants. Consequently, except as provided in Subsection (B) of this
7 Section 28, no other person other than any trustees under the Trust Indenture and the Purchaser
8 Participant Trust Agreement shall have any interest in, be a beneficiary of or be entitled to
9 enforce the provisions of the Joint Venture Agreement.

10 (B) OMEGA JV6 and the Participants agree, in consideration of AMP-Ohio's
11 undertaking, on behalf of the Financing Participants, to issue its Bonds payable solely from
12 payments to be made by the Financing Participants under the Financing Agreement and under
13 this Joint Venture Agreement, AMP-Ohio shall be a third party beneficiary of the provisions of
14 this Joint Venture Agreement, including in particular, and without limitation, the provisions of
15 Section 18, but only to the extent necessary to protect its legitimate interests. OMEGA JV6 and
16 the Participants further acknowledge the assignment by AMP-Ohio to the trustee under the initial
17 Trust Indenture of certain of AMP-Ohio's rights under the Financing Agreement and under this
18 Joint Venture Agreement and agree that such trustee may exercise and enforce such rights under
19 this Joint Venture Agreement the same as if it were AMP-Ohio.

20 **SECTION 29. SURVIVORSHIP OF OBLIGATIONS**

21 The termination of this Joint Venture Agreement shall not discharge any Party hereto
22 from any obligation that it owes to any other Party under this Joint Venture Agreement by
23 reason of any transaction, loss, cost, damage, expense, or liability which shall occur or arise (or

1 the circumstances, events, or basis of which shall occur or arise) prior to such termination. It is
2 the intent of the Parties hereby that any such obligation owed (whether the same shall be known
3 or unknown at the termination of this Joint Venture Agreement or whether the circumstances,
4 events, or basis of the same shall be known or unknown at the termination of this Joint Venture
5 Agreement) shall survive the termination of this Joint Venture Agreement.

6 **SECTION 30. ARBITRATION; VENUE**

7 (A) If a dispute between or among any of the Parties should arise under this Joint
8 Venture Agreement, any such Party may call for submission of the dispute to arbitration. If all
9 Parties to the dispute agree in writing to have the dispute submitted to arbitration, such
10 arbitration shall proceed under the terms set forth herein and shall be final and binding. In the
11 absence of such an agreement, the dispute may be submitted to a court of competent jurisdiction.

12 (B) The Party calling for arbitration shall give written notice to all other Parties to this
13 Joint Venture Agreement setting forth in such notice the nature of the dispute, the amount of
14 money, if any, involved in such dispute, and the remedy sought by the Party calling for
15 arbitration.

16 (C) Unless otherwise agreed, the arbitration shall be governed by R.C. §§2711.01 *et*
17 *seq.*, and any applicable procedural rules of the Court of Common Pleas of Franklin County,
18 Ohio, except that such arbitration shall be before an arbitrator agreed to by the Parties to the
19 arbitration, or, if they cannot agree, one appointed by such Court. Each Party to the arbitration
20 shall pay a *pro rata* share of the costs and expenses of the arbitrator.

21 (D) In the event that any dispute arising under this Joint Venture Agreement shall
22 result in litigation, the Parties agree that exclusive jurisdiction and venue for all litigation
23 proceedings shall only be proper in the Court of Common Pleas of Franklin County, Ohio. Each

1 Party consents to such jurisdiction and venue and agrees not to raise the issues of lack of
2 jurisdiction, improper venue or inconvenient forum in any such litigation.

3 **SECTION 31. LIABILITY AND ALLOCATION OF RISK**

4 (A) Neither OMEGA JV6 nor the other Participants shall be responsible for the
5 receiving, transmission, control, use, application, or distribution of electric power and energy
6 associated with any Participant's ownership share of the Project beyond any Point of Availability
7 and shall not, in any event, be liable for damage or injury to any person or property whatsoever
8 arising, accruing, or resulting from, in any manner, the receiving, transmission, control, use,
9 application, or distribution of said electric power and energy beyond any Point of Availability or
10 otherwise on the system of a Participant. Nothing in this Section 31(A) should be construed to
11 prevent OMEGA JV6 or any Participant from compromising or settling, on reasonable terms,
12 any pending or threatened litigation or claim.

13 (B) To the fullest extent permitted by applicable law, no recourse shall be had against
14 any individual member of the Utility Governing Body of any Participant or against any
15 individual Participant or its representative on the Board of OMEGA JV6 or any officer or
16 employee of any Participant or OMEGA JV6, past, present or future, either directly or indirectly,
17 whether by virtue of any penalty or otherwise, for any claim based upon or arising out of this
18 Joint Venture Agreement, any opinion given in connection therewith, or the obligations of the
19 Parties hereunder, all such liability, if any, being by the execution and delivery of this Joint
20 Venture Agreement specifically waived and released.

21 (C) The Participants recognize the existence of risk of uninsured loss or damage to
22 third parties arising out of, connected with, occasioned by, or resulting from this Joint Venture
23 Agreement or any activities hereunder. It is the intention of the Participants that the expense of

1 such claims, including the cost of defense and any and all uninsured loss or damage, be paid as a
2 part of the Revenue Requirements and that each Participant's liability therefor shall be limited to
3 its Project Share as set forth in Appendix A.

4 (D) To the extent permitted by applicable law, each Participant, severally in
5 proportion to its Project Share, agrees to pay to OMEGA JV6 its proportional share of the cost of
6 any and all liability, claims, damages, expenses (including attorneys' fees) from third parties
7 related to the Project or this Joint Venture Agreement, except such liability shall not be so
8 limited to the extent that such liability arises out of a Participant's negligence in discharging its
9 obligations under the Joint Venture Agreement or under a Related Agreement. Such obligation
10 shall apply whether the claims involved be based upon contract, tort, except where and to the
11 extent a Participant, its respective agents, servants or employees were actively or passively
12 negligent or otherwise participated in the wrong. Except as set forth in this Section 31, the
13 Participants expressly waive any and all rights of contribution for such liability from other
14 Participants or OMEGA JV6.

15 (E) Nothing in this Joint Venture Agreement shall be construed to waive any
16 immunities which the Participants or OMEGA JV6 may have now or in the future.

17 (F) Except for malfeasance or willful misconduct, OMEGA JV6 shall, to the extent
18 permitted by applicable law, pay the costs incurred by each officer, including the Participants'
19 board representatives serving in accordance with the Regulations, and each employee and each
20 former officer or employee and any person who is serving or has served in good faith at
21 OMEGA JV6's request as an officer, agent or employee of OMEGA JV6, against costs and
22 expenses reasonably incurred by or imposed upon him, judgments, decrees, fines, penalties, or
23 amounts paid in settlement or in connection with the defense of any pending or threatened action,

1 suit, or proceeding, criminal, civil or otherwise, to which he is or may be made a party by reason
2 of having been such officer, agent or employee to the fullest extent permitted by law or pay for
3 the same. The above payments shall include legal fees, but only counsel authorized by OMEGA
4 JV6 may furnish representation as a condition of such payment. The right to payment conferred
5 upon such officers and employees of by this Section 31(F) shall not be exclusive of any other
6 rights to which they may be lawfully entitled, and shall inure to the benefit of their heirs,
7 successors, and administrators, and shall be specifically conditioned upon timely notice to
8 OMEGA JV6 of any such pending or threatened action, suit or proceeding.

9 (G) No covenant, representation, obligation or agreement herein contained shall be
10 deemed to be a covenant, representation, obligation or agreement of any member of the Utility
11 Governing Body of any Participant or of any agent, officer or employee of any Participant in his
12 or her individual capacity, and neither such members of the Utility Governing Body nor any
13 agent, officer or employee of any Participant nor any official executing this Joint Venture
14 Agreement or any Trust Indenture shall incur any personal liability therefor arising in any way
15 from the approval or execution this Joint Venture Agreement or the activities contemplated
16 hereunder.

17
18 **SECTION 32. RELATED AGREEMENTS; ENFORCEMENT AND**
19 **AMENDMENT**
20

21 (A) OMEGA JV6 shall enforce the provisions of each Related Agreement, and duly
22 perform its covenants and agreements thereunder. OMEGA JV6 will not consent or agree to or
23 permit any rescission of or amendment to any Related Agreement, which will in any manner
24 materially adversely affect (i) the rights or interests of OMEGA JV6 thereunder, or (ii) the rights
25 or interests of the Participants under this Joint Venture Agreement; *provided, however, that*

1 nothing in this Section 32(A) shall be construed to prevent OMEGA JV6 from settling any
2 litigation.

3 (B) It is recognized by the Participants that it is contemplated that OMEGA JV6 may
4 rely on third parties, such as AMP-Ohio, under, for example, the Related Agreement set forth as
5 Appendix F-1, to fulfill all or a portion of its obligations under this Joint Venture Agreement.
6 Each such agreement and any supplements, modifications, renewals and replacements thereof
7 entered into pursuant to Section 4(G) hereof shall be effective according to its terms, without
8 further approval by any Participant, and shall be included as a part of a modified Appendix F as
9 soon as practical after the same is executed. The same shall not be construed to be a
10 modification of this Joint Venture Agreement.

11 (C) OMEGA JV6 hereby approves the sale of the Project's green or renewable energy
12 attributes by AMP-Ohio on OMEGA JV6's behalf under the terms of the Energy Attributes
13 Agreement.

14 SECTION 33. TERM OF JOINT VENTURE AGREEMENT

15 (A) This Joint Venture Agreement shall become effective on the date upon which this
16 Joint Venture Agreement shall have been executed and delivered by Participants which shall
17 have agreed to own or to acquire Project Shares in kilowatts equal to, in the aggregate, no less
18 than one hundred percent (100%) of Project Capability; *provided, however*, that this Joint
19 Venture Agreement shall only become effective if such date is no later than March 31, 2004;
20 and, provided further, that other municipalities may also become Participants after the effective
21 date by execution and delivery of this Joint Venture Agreement prior to the initial meeting of the
22 Participants held in accordance with Section 3(B) hereof. Notwithstanding the foregoing and the
23 representations of the Participants herein, in the event it is ultimately determined that any

1 Participant failed duly and validly to authorize or execute and deliver this Joint Venture
2 Agreement or that this Joint Venture Agreement, or any portion hereof, is invalid or
3 unenforceable with respect to any Participant for any reason whatsoever; such determination
4 shall in no way affect the commencement, term, validity or enforceability of this Joint Venture
5 Agreement with respect to any other Participant.

6 (B) This Joint Venture Agreement shall remain in effect until sixty (60) days
7 subsequent to the termination or disposition of the Project pursuant to Section 16, and thereafter
8 until for so long as required by the Financing Agreement; *provided, however*, that each
9 Participant shall remain obligated to pay to OMEGA JV6 its respective share of the costs of
10 terminating, discontinuing, retiring, disposing of, and decommissioning the Project.

11 **SECTION 34. OWNERSHIP INTERESTS, ADDITIONAL PARTICIPANTS,**
12 **CHANGE IN STATUS, PURCHASE AND REMOVAL OF UNITS**

13
14 (A) All tangible property, whether real or personal, that constitutes the Project shall be
15 owned by the Owner Participants and the trustees under the Purchaser Participant Trust
16 Agreement to the extent necessary for Purchaser Participants, in undivided shares, each such
17 share being equal to that Participant's Project Share as set forth on Appendix A. All other
18 property or contract rights associated with the Project under the Joint Venture Agreement shall
19 be held by the Participants in undivided shares equal to the respective Project Shares of the
20 Participants. In recognition of the indivisible nature of the Project, each Participant hereby
21 irrevocably waives any and all rights to partition, or sale in lieu of partition, of the tangible
22 property constituting all or any part of the Project.

23 (B) OMEGA JV6 shall, as required by law, make appropriate filings in all
24 jurisdictions in which it owns property or does business that it is doing business as OMEGA JV6
25 and shall hold title to all property in the name of OMEGA JV6 on behalf of the Participants.

1 (C) Upon the unanimous approval of the Participants, additional municipalities may
2 become Participants and may be offered and may purchase Project Shares by execution of this
3 Agreement and acceptance of whatever other terms and conditions are deemed appropriate by
4 the Participants, provided that the conditions for assignment set forth in Section 27(B)(v) are
5 satisfied. Any resulting revised Project Shares shall be reflected on Appendix A.

6 (D) Upon approval of OMEGA JV6, any Purchaser Participant may become an
7 Owner Participant upon the request of the Purchaser Participant after removal of any legal
8 impediments thereto.

9 SECTION 35. NO PARTNERSHIP

10 The Participants expressly agree that no partnership is created by the provisions of this
11 Joint Venture Agreement and no Participant or OMEGA JV6 may act as agent for or bind any
12 other Participant except to the extent contemplated by this Joint Venture Agreement. References
13 in this Joint Venture Agreement to the acting or taking actions or performing obligations
14 "jointly" are intended to indicate doing so together as a cooperative effort and are not intended to
15 create any pecuniary or other liability on the part of any Participant for such liability of any other
16 Participant.

18 SECTION 36. COUNTERPARTS

19 This Joint Venture Agreement may be executed and delivered in counterparts, each of
20 which shall for all purposes be treated as the original hereof and all of which shall constitute a
21 single agreement.

22
23 IN WITNESS WHEREOF, the Parties hereto have caused this Joint Venture Agreement

1 to be executed by their proper officers respectively, being thereunto duly authorized, and their
2 respective corporate seals, if any, to be hereto affixed.

3
4 THE City of Obertin, OHIO

5
6 By *Robert J. Smith*

7 Title: CITY MANAGER

8
9 Status (check one)

10 Financing Participant ☒

11 Non-Financing Participant ☐

Status (check one):

Owner Participant ☒

Purchaser Participant ☐

12
13 Approved as to form:

14 *Wm. R. Smith*

15 _____

16 Title: *City Solicitor*

Address for receipt of notice:
