

RESOLUTION NO. 19-47

A RESOLUTION AGREEING TO ISSUE REVENUE BONDS OF THE STATE OF OHIO TO ASSIST IN THE FINANCING OF THE COSTS OF THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF AIR QUALITY FACILITIES FOR THE USE OF OHIO CITY LEGACY LLC OR AN AFFILIATE THEREOF.

WHEREAS, the Ohio Air Quality Development Authority, a body corporate and politic, organized under the laws of the State of Ohio (the "Authority"), and pursuant to the laws of the State of Ohio, particularly Chapter 3706, Ohio Revised Code (the "Act"), wishes to take the necessary actions for the issuance of air quality development revenue bonds in one or more series (the "Bonds") of the State of Ohio (the "State") to assist Ohio City Legacy LLC or an affiliate thereof (together, the "Company"), in the financing of the costs of the acquisition, construction and installation of certain air quality facilities (the "Project") further described in Exhibit A to the form of Agreement To Issue Bonds attached hereto as Exhibit 1 (the "Agreement"), which Project will reduce emissions of air contaminants into the ambient air through improvements in the efficiency of energy utilization and/or energy conservation. The Project qualifies as an air quality facility under Section 3706.01(G)(5), Ohio Revised Code ("Air Quality Facility"), is located within the boundaries of the State, and is owned by the Company;

NOW, THEREFORE, BE IT RESOLVED by the Ohio Air Quality Development Authority of the State of Ohio that:

SECTION 1. Based upon the Application of the Company dated April 23, 2019 and currently on file with the Authority, and subject to further certifications regarding the same by the Company as may be required by the Authority in connection with the issuance of the Bonds, as defined herein, this Authority hereby finds and determines that:

- (a) The Air Quality Facility will promote the reduction of emissions of air contaminants into the ambient air through improvements in the efficiency of energy utilization and constitute air quality facilities within the meaning of that term as defined in Section 3706.01(G)(5), Ohio Revised Code;
- (b) The Project will be consistent with the purposes of Section 13 of Article VIII, Ohio Constitution, and Chapter 3706, Ohio Revised Code particularly promoting the public policy of the State as stated in Section 3706.03, Ohio Revised Code; and
- (c) The Project is not inconsistent with any applicable air quality standards duly established and required to be met pursuant to the "Clean Air Act", 84 Stat. 1679 (1970), 42 U.S.C.A. §§7401 et. seq., as amended, including as amended by the "Clean Air Act Amendments of 1990".

SECTION 2. In order to assist in the financing of costs of the Project, the Authority hereby agrees, subject to the terms of Section 1 hereof and the Authority's review of a final report from its energy consultants, that it will authorize and issue, upon the terms provided in the Agreement, which is hereby in all respects approved, the Bonds in the aggregate principal amount not to exceed \$150,000,000, or such lesser amount as determined by the Authority to constitute qualifying costs under its policies, to pay actual costs of the Project pursuant to Chapter 3706, Ohio Revised Code, which amount will be determined by the Authority prior to its consideration of the resolution authorizing the issuance of the Bonds (the "Bond Resolution").

SECTION 3. Subject to further approval by the Authority of the terms and conditions thereof, the Authority will authorize, execute or otherwise approve (a) a financing agreement or agreements as described in the Agreement with the Company whereby the Company will use the proceeds of the Bonds to finance the costs of the acquisition, construction and installation of the Project and will make payments sufficient to pay all of the principal of and premium, if any, and interest on the Bonds, (b) a trust indenture, mortgage, assignment of revenues, pledge agreement or other agreement to secure each series of the Bonds, and (c) such other instruments and documents as shall be necessary or desirable in connection with such financing.

SECTION 4. The Executive Director is hereby authorized and directed to execute on behalf of the Authority the Agreement substantially in the form attached hereto as Exhibit 1, with such changes as are not adverse to the Authority or the State as such officer may approve, such execution being conclusive evidence of approval of any such changes.

SECTION 5. If the Company determines it to be appropriate, the preparation and use of one or more preliminary official statements or offering circulars for one or more series of the Bonds, is hereby authorized, subject to the approval of its form in the Bond Resolution.

SECTION 6. In order to assist the Authority in monitoring the Project, the Company shall agree to provide such technical and other information as requested by the Authority, after the Project is put in operation and while the Bonds remain outstanding, in order to enable the Authority to measure and verify the technical performance of the Project.

SECTION 7. The Authority hereby appoints Squire Patton Boggs (US) LLP to provide legal services as bond counsel and Dinsmore & Shohl LLP to provide services as issuer counsel, each with respect to the Bonds. The Authority approves and ratifies the retention of PFM as its financial advisor and the consortium of the University of Dayton and Texas A&M University as its technical advisor. The fees associated with the use of professional services are the responsibility of the Company.

SECTION 8. If the Bonds have not been issued by September 1, 2020, then this Resolution shall expire, unless extended by the Authority. Further, this Authority may, from time to time, take additional action with respect to the Project or the Bonds, as appropriate, in accordance with the Act.

SECTION 9. It is found and determined that all formal actions of the Authority concerning and relating to the adoption of this Resolution were taken in an open meeting of the Authority, and that

all deliberations of the Authority and of any of its committees, subcommittees and other public bodies that resulted in those formal actions, were in meetings open to the public, in full compliance with all applicable legal requirements.

SECTION 10. This Resolution shall take effect and be in force immediately upon its adoption.

Chairman

Secretary-Treasurer

Adopted: August 13, 2019

AGREEMENT TO ISSUE BONDS

THIS AGREEMENT, entered into as of August __, 2019, between the OHIO AIR QUALITY DEVELOPMENT AUTHORITY, a body corporate and politic duly organized and validly existing under the laws of the State of Ohio (herein called "Authority"), and Ohio City Legacy LLC (the "Company"), for the purpose of promoting the public policy of the State of Ohio (the "State") as set forth in Chapter 3706, Ohio Revised Code ("Chapter 3706") under the following circumstances:

A. The Company desires to finance costs of certain air quality facilities, further described in Exhibit A attached hereto (the "Project"), located in Cuyahoga County, Ohio, which Project will be owned by the Company;

B. The Company has requested that the Authority issue revenue bonds of the State pursuant to Chapter 3706 in an aggregate principal amount not to exceed \$150,000,000, or such lesser amount as determined by the Authority to constitute qualifying costs under its policies (the "Bonds"), to assist in the financing of the Project, and the Company is agreeable to making payments with respect to the Project and its financing by the State sufficient to pay all of the principal of and premium, if any, and interest on the Bonds ("Debt Service"); and

C. The Authority is willing to issue the Bonds in order to promote the public policy of the State, including the reduction of emissions of air contaminants into the ambient air through improvements in the efficiency of energy utilization or energy conservation, subject to the Authority's approval of the terms thereof.

As an inducement to and in consideration of the Company's plans with respect to the Project, the Authority and the Company agree as follows:

SECTION 1. Upon determination by the Company to proceed with the acquisition, construction and installation of the Project, which determination shall be in the absolute discretion of the Company, the Company may commence with the acquisition, construction and installation of one or all components of the Project, which Project will be consistent with the purposes of Section 13 of Article VIII, Ohio Constitution, and Chapter 3706, and the Company may provide, or cause to be provided, at its expense, the necessary interim financing to permit the acquisition, construction and installation of the Project to commence and continue.

SECTION 2. In order to secure the payment of the Debt Service on the Bonds, the Authority may enter into one or more pledge agreements or assignments of revenues, which shall have the terms and conditions as may be provided or permitted under Chapter 3706. Upon request of the Authority or the purchaser or purchasers of any series of Bonds, the Company shall give, and the Authority or the trustee, mortgagee or secured party designated under such trust agreement, mortgage or security agreement shall, on behalf and for the protection of the holders of the Bonds, accept, such other security as may be provided or permitted under Chapter 3706. Neither the Authority nor the State, nor any political subdivision thereof, shall have any financial

responsibility with respect to the Bonds or the Project except from "revenues" (as defined in Section 3706.01(K), Ohio Revised Code) derived by the Authority with respect to the Bonds and the Project.

SECTION 3. Subject to further approval of the Authority and its determination of qualifying costs of the Project in accordance with its policies and the satisfaction of all other requirements, the Authority shall promptly issue one or more series of Bonds as and when the Authority receives the request of the Company designating the purchaser or purchasers and the principal amount thereof, maturing in such amounts and times, bearing interest at the rate or rates, payable on the dates and having such optional and mandatory redemption features and prices as are requested by the Company, all of which terms are subject to review and approval by the Authority in accordance with Chapter 3706 and Authority policies. The Authority shall cause the Bonds to be delivered to the purchaser or purchasers thereof designated as aforesaid and will cooperate to its fullest extent in consummating the transaction.

SECTION 4. The Authority and Company agree that the issuance of the Bonds is subject to the Company's demonstration, to the satisfaction of the Authority that the relevant local political subdivisions are knowledgeable about the Authority's financing terms and statutory exemptions.

SECTION 5. The Authority and Company agree that the Bonds may be issued either at one time or in series from time to time as the Company shall request; provided that a request for the issuance of a series shall not relieve the Authority of its obligations hereunder to issue the remaining Bonds as requests therefor are received.

In order to assist the Authority in monitoring the Project, the Company agrees to provide such technical and other information as requested by the Authority, after the Project is put in operation and while the Bonds remain outstanding, in order to enable the Authority to measure and verify the technical performance of the Project.

SECTION 6. The Company agrees that it will reimburse, indemnify and hold harmless the Authority for all reasonable and necessary out-of-pocket expenses and fees that the Authority may incur at the Company's request arising from the execution of this Agreement and the performance by the Authority of its obligations hereunder. Such fees and expenses include the fees and expenses of the Authority's financial advisor, legal counsel, energy consultants, and any other professionals retained by the Authority to evaluate the Project or assist in the financing of the Project.

SECTION 7. The Company agrees that it shall not use publicly the Authority's name or logo, or otherwise refer to the Authority or the professional consultants retained by the Authority, in advertising, promotional, or other, material without the prior written consent of the Authority.

SECTION 8. If a first series of Bonds has not been issued by September 1, 2020, then this Agreement shall expire and terminate, unless otherwise extended in writing by the parties hereto.

IN WITNESS WHEREOF, the Ohio Air Quality Development Authority, pursuant to a resolution of the Authority duly adopted by the Authority on August 13, 2019, and the Company have caused this Agreement to be executed in their respective names, and on their behalf by their duly authorized officers as of the year and date first above written.

OHIO AIR QUALITY DEVELOPMENT AUTHORITY

By: _____
Executive Director

OHIO CITY LEGACY LLC

By: _____
Title: _____

EXHIBIT A

PROJECT SUMMARY

The portion of the Company's 750,000 square foot mixed use project, to be located at the corner of West 25th Street and Lorain Avenue, Cleveland (Cuyahoga County), Ohio, that constitutes "air quality facilities" as determined by the Authority in accordance with its policies and procedures.