

COOPERATIVE ENDEAVOR AGREEMENT

BY AND BETWEEN

STATE OF LOUISIANA

AND

LA ENERGY PARTNERS, LLC

[•], 2019

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LIST OF EXHIBITS

- Exhibit “A” – Defined Terms
- Exhibit “B” – Master Net Public Benefit Assurance
- Exhibit “C” – Master Cooperative Purchasing Provisions
- Exhibit “D” – Master Termination Provisions
- Exhibit “E” – Master Insurance Requirements
- Exhibit “F” – Form of Adoption Agreement for Projects
- Exhibit “G” – Phase I Project Adoption Agreement
- Exhibit “H” – Phase I OSB Facility Optimization Services Agreement
- Exhibit “I” – Shaw Center Plant Lease
- Exhibit “J” – Shaw Center Thermal Services Agreement
- Exhibit “K” – Phase I Net Public Benefit Assurance Provisions
- Exhibit “L” – Phase I Payment Terms
- Exhibit “M” – Phase I Termination

COOPERATIVE ENDEAVOR AGREEMENT

This Cooperative Endeavor Agreement (“**Agreement**”), effective upon the date executed by both Parties (“**Effective Date**”), is made between:

THE STATE OF LOUISIANA (the “**State**”), appearing herein through Jay Dardenne, the Commissioner of Administration, Division of Administration, duly authorized and empowered by the State; and

LA ENERGY PARTNERS, LLC (“**LAEP**”), a Delaware limited liability company, appearing herein through Michael T. Durham, its duly authorized agent;

(the State and LAEP are collectively referred to as the “**Parties**” and singularly referred to as a “**Party**”).

RECITALS:

I. General

WHEREAS, the Louisiana Constitution of 1974, as amended, in Article VII, Section 14(C), provides that for a public purpose the State and its political subdivisions may engage in cooperative endeavors with each other and with any public or private association, corporation or individual;

WHEREAS, the Louisiana Constitution of 1974, as amended, in Article IX, Section 1 provides that the natural resources of the State, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people;

WHEREAS, the operating costs and deferred maintenance and replacement of assets at State-owned and -operated facilities places a substantial financial burden on the State and exposes the State and those facilities to risks that materially and adversely impact the State’s ability to conduct its business and satisfy its commitments and obligations;

WHEREAS, to lessen the impact of lack of adequate funding, the State continuously seeks to mitigate these risks, eliminate unnecessary expenditures and increase efficiencies that derive savings;

WHEREAS, in furtherance of these efforts, the State, through the Office of State Buildings (“**OSB**”), issued a Solicitation for Offers for a Cooperative Endeavor Agreement Number 300000812, for a public-private partnership regarding statewide chiller facilities and building energy conservation measures (the “**SFO**”);

WHEREAS, Bernhard, LLC (doing business as Bernhard Energy Solutions) and Johnson Controls, Inc. collaborated to submit a proposal in response to the Solicitation for Offers pursuant to which they would form LAEP to enter into this Agreement with the State in order to establish a framework pursuant to which the Parties will enter into arrangements to, among other things, convey exclusive leasehold or concession rights to LAEP over certain State-owned or -controlled utility plants and engage LAEP to undertake Improvements to State-owned or -controlled buildings in order to mitigate the State’s risks, assist the State in complying with its commitments and obligations and make such assets and properties more efficient, thus saving the State money;

WHEREAS, the Parties desire to enter into this Agreement to establish a framework to facilitate and advance the goals recited herein, as well as other goals for the public benefit of the State, through multiple Projects to be performed by one or more Affiliates of LAEP (referred to as Project SPEs);

WHEREAS, the Parties intend that over the Term of this Agreement the contemplated Projects will reduce the need for State general fund expenditures necessary for the operation, maintenance, repair, renewal and enhancement of Covered Facilities, as well as creating energy efficiencies resulting in reduced energy and operating costs for the State which will have a beneficial effect on economic and operating expenditures of the State, third-parties and the environment;

WHEREAS, the State and the public will benefit from the economic development and revenue generation created pursuant to the Projects;

WHEREAS, (a) the State Investment for each Project will be for a public purpose that comports with the governmental purpose for which the State Entity party to such Project has the legal authority to pursue, (b) it is anticipated that the value of the benefits of each Project to the State and its citizens will exceed the value of the State Investment undertaken for such Project so that all expenditures by the State Entity party to a Project will not be gratuitous donations and (c) for each Project it shall be a condition precedent that the State Entity entering into such Project establish a demonstrable, objective and reasonable expectation of receiving at least equivalent value in exchange for the State Investment for such Project;

WHEREAS, any and every new Project shall satisfy the Constitutional, statutory, regulatory and jurisprudential conditions for a cooperative endeavor agreement;

II. Phase I Project

WHEREAS, simultaneous with the execution and delivery of this Agreement, the Parties desire to now enter into Ancillary Agreements for the initial Project contemplated by this Agreement (the “**Phase I Project**”);

a. Shaw Center

WHEREAS, the State is party to the Shaw Center CEA, pursuant to which the parties thereto designed, constructed and operate a multi-use museum, theatre and arts complex known as “The Shaw Center for the Arts”;

WHEREAS, pursuant to the Shaw Center CEA, the State provides, at the State’s cost and expense, thermal services and certain operation, maintenance, repair, renewal and enhancement services to the Shaw Center Building;

WHEREAS, the State provides thermal services to the Shaw Center Building from existing assets situated within the Shaw Center Plant located near the Shaw Center Building, and delivers the same through established distribution systems comprising piping, valves and fittings running between the Shaw Center Building and the Shaw Center Plant;

WHEREAS, LAEP desires to operate and maintain the Shaw Center Plant and the assets contained therein in exchange for the exclusive lease of the Shaw Center Plant and all assets therein, and provide Thermal Services to the Shaw Center Building on a priority usage basis and thereby relieve the State of its current financial and operational undertaking of providing thermal services to the Shaw Center Building;

WHEREAS, as further consideration by LAEP to lease the Shaw Center Plant and assume certain State obligations under the Shaw Center CEA, LAEP desires to provide specific enhancements and improvements to the Shaw Center Building;

WHEREAS, the State expects to recognize financial benefits from the enhancements made to and improvements installed in the Shaw Center Building, including (i) utility and operational cost savings, (ii) Infrastructure Savings, and (iii) improved functionality and reliability of the Shaw Center Building;

WHEREAS, the State has obtained the prior written approval of the Commissioner to lease the Shaw Center Plant to LAEP pursuant to La. R.S. 33:9036 for the purposes of economic development, as the Project is located within a downtown development district in the city of Baton Rouge;

b. Office of State Buildings

WHEREAS, the State has identified specific buildings where the operational costs and deferred maintenance and replacement costs have limited the State's ability to operate and maintain those buildings and LAEP desires to provide specific enhancements and improvements to such buildings to mitigate the State's operational costs and risks therein;

WHEREAS, the State expects to recognize financial benefits from the enhancements made to and improvements installed in the buildings, including (i) utility and operational cost savings, (ii) Infrastructure Savings, and (iii) improved functionality and reliability of the buildings;

WHEREAS, the Parties desire to collaboratively support the State and its commitments and obligations to its citizens through the Phase I Project;

III. Future Projects

WHEREAS, the SFO contemplated that the State or other State Entities may enter into future Projects for the type of Work and Services described therein under the terms and conditions of this Agreement; and

WHEREAS, by allowing the State and other State Entities to pursue additional future Projects under this Agreement, the State and such State Entities will benefit by relying on the framework established herein, including contractual protections afforded to the State and other State Entities herein and assurance that each such Project will have a Net Public Benefit.

AGREEMENT:

THEREFORE, IT IS AGREED:

**ARTICLE 1
DEFINITIONS; CONFLICT OF TERMS**

Section 1.1 Defined Terms. When used in any Contract Document, the terms contained in **Exhibit "A"** will have the meanings given in that Exhibit unless a different meaning is expressed or clearly indicated by the context in the applicable Contract Document. Defined terms will be given their common and ordinary meanings when they appear uncapitalized in the text. Undefined terms will be given their common and ordinary meanings pursuant to custom and industry parlance. Notwithstanding the foregoing, any terms defined in an Ancillary Agreement shall have the meaning set forth in such Ancillary Agreement.

Section 1.2 Interpretation; Use of Defined Terms.

- a.** The definitions of terms will apply equally to the singular and plural forms of the terms defined;
- b.** Whenever the context may require, any pronoun will include the corresponding masculine, feminine and neuter forms;
- c.** The words “herein”, “hereof” and “hereunder”, and words of similar import, will be construed to refer to the applicable Contract Document in its entirety and not to any particular provision thereof;
- d.** The words “include”, “includes” and “including” will be deemed to be followed by the phrase “without limitation”;
- e.** The verb “will” shall be construed to have the same meaning and effect as the verb “shall”;
- f.** Any definition of or reference to any agreement (including a Contract Document), document, standard, principle or other instrument in a Contract Document will be construed as referring to such agreement, document, standard, principle or other instrument as from time to time amended, supplemented, substituted, novated, assigned or otherwise modified (subject to any restrictions on such amendments, supplements, substitutions, novations, assignments or modifications set forth in a Contract Document);
- g.** Any reference herein to any Person, or to any Person in a specified capacity, will be construed to include such Person’s successors and assigns or such Person’s successors in such capacity, as the case may be (subject to any restrictions on assignment set forth in a Contract Document);
- h.** All references to Articles, Sections, Exhibits and Appendices will be construed to refer to Articles, Sections, Exhibits and Appendices of or to the applicable Contract Document. The Exhibits and Appendices to a Contract Document are an integral part of that Contract Document. Notwithstanding the foregoing, the provisions of a Contract Document will prevail over the provisions of the Exhibits and Appendices to such Contract Document to the extent of any inconsistency;
- i.** The headings used are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting a Contract Document;
- j.** Any reference to time of day is a reference to Central Standard Time or Central Daylight Saving Time, as the case may be;
- k.** Any reference to a governmental authority is deemed to include a reference to any successor to such governmental authority or any Person which has taken over the responsibilities or functions of said governmental authority;
- l.** All monetary amounts are expressed in U.S. dollars;
- m.** If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day; and
- n.** By this reference, each “WHEREAS” clause contained in the Recitals of a Contract Document is made part of that Contract Document as if fully set forth therein.

ARTICLE 2
SCOPE OF COOPERATIVE ENDEAVOR

Section 2.1 **State Benefits.** Projects may have one or more of the following positive impacts to the State and its citizens:

- a. utility and operational cost savings to the State due to efficiencies created by Improvements made to Covered Facilities;
- b. avoidance of costly operation and maintenance services, Infrastructure Savings and deferred maintenance expenses of the State with respect to Covered Facilities;
- c. improved functionality and reliability of receipt of Thermal Services to and within Covered Facilities; and
- d. design and construction of Improvements that provide energy cost reductions, operational cost reductions, load reductions and/or equipment upgrades or replacements to Covered Facilities.

The benefits described in this Section 2.1 are collectively known as “**Project Benefits**”, and the specific Project Benefits of each Project will be identified in the applicable Ancillary Agreements and a related Net Public Benefit Assurance Plan for such Project utilizing the principles set forth in **Exhibits “B”** and “**C**”. The Project Benefits of the Phase I Project are set forth in the Phase I Ancillary Agreements and **Exhibit “K”**.

Section 2.2 **Relationship of Parties; Independent Contractor.** Nothing in the Contract Documents will be deemed to constitute any Party a partner, agent or legal representative of any other Party or to create a joint venture, partnership, agency or any relationship between the Parties, and LAEP and the Project SPEs are independent contractors of the State and will be independent contractors of any State Entities with respect to the Projects. No employees or representatives of LAEP or a Project SPE shall be deemed employees or independent contractors of the State or any State Entity, and neither the State nor any State Entity shall be liable to LAEP, a Project SPE or their employees for any employment benefits. It is expressly acknowledged and understood that LAEP and the Project SPEs shall not be bound to comply with Louisiana’s Public Bid Laws, La. R.S. 38:2211, *et seq.*, or the Louisiana Procurement Code, La. R.S. 39:1551, *et seq.*, with respect to procurement of materials or the selection of a contractor for any Work or Services, regardless of the total amount of any such contract. It is expressly acknowledged and understood that LAEP and the Project SPEs shall not be bound to comply with the Louisiana Public Records Law, the Louisiana Open Meetings Law and the Louisiana Civil Service Law with regard to the procurement of any materials or services under any Contract Document.

Section 2.3 **Net Public Benefit Assurance.** The amount of the Net Public Benefit for a specific Project shall be calculated annually throughout the term of such Project according to the principles set forth in **Exhibit “B”**. The plan to measure the annual Net Public Benefit for the Phase I Project is set forth in **Exhibit “K”**. Within ninety (90) days of the end of each Service Year of a Project, LAEP and the applicable Project SPE shall provide to the State or the applicable State Entity an annual reconciliation of the Net Public Benefit of such Project for the previous Service Year. The State and applicable State Entity shall have thirty (30) days to review and approve or dispute the annual reconciliation. Failure of the State or a State Entity to respond within thirty (30) days shall be deemed approval thereof. If the State disagrees with the annual reconciliation, the disagreement shall be considered a Dispute under ARTICLE 14 and shall be resolved pursuant to the terms contained therein. In any Service Year of a Project where there is not a Net Public Benefit, LAEP and the applicable Project SPE shall pay to the State the amount that the State Investment for that Project expended for that Service Year exceeded the Project Benefits for that Service

Year. Such payment shall be made within thirty (30) days of the State or the applicable State Entity's approval (or deemed approval) of the Net Public Benefit pursuant to this Section 2.3 or final resolution of any Dispute pursuant to ARTICLE 14, and shall not be in the form of a credit towards any charges for future Work or Services related to that Project. The failure of a Project to generate a Net Public Benefit for a Service Year shall not be deemed an overpayment for the purposes of La. R.S. 39:72(B). The determination of Net Public Benefit shall be determined on a Project-by-Project basis, and no deficit or surplus from any Project will affect or be taken into consideration in the determination of a Net Public Benefit, or lack thereof, for any other Project.

ARTICLE 3 AUTHORITY

Section 3.1 State Authority. The State is granted authority, pursuant to Section 14(C) of Article VII of the Louisiana Constitution of 1974, as amended, to enter into cooperative endeavor agreements with public and private associations or corporations for a public purpose, including agreements which may require the use of State funds, personnel or other resources, provided legal guidelines are met and the Project Benefits are demonstrated to be commensurate with or greater than the investment of funds by the State. This Agreement is entered into with the expectation and belief that during the Term, the Project Benefits from each Project will exceed the obligations of the State under the applicable Ancillary Agreements for the respective Project, including the State Investment thereunder.

Section 3.2 LAEP and Project SPE Authority. LAEP has provided to the State a copy of LAEP's certificate of formation, limited liability company agreement, a certificate of good standing and a duly executed unanimous consent of the board of managers of LAEP, evidencing the authority and representation of LAEP by the undersigned representative, such documents collectively demonstrating the authority of LAEP to enter into this Agreement, to carry out the commitments made herein, and the authority of the undersigned representative to execute this Agreement on behalf of LAEP. At or prior to a Project SPE entering into any Ancillary Agreement, LAEP will provide to the State a copy of the Project SPE's certificate of formation, limited liability company agreement, a certificate of good standing and a duly executed certification of LAEP that such Project SPE is an Affiliate, evidencing the authority and representation of the Project SPE by its undersigned representative to such Ancillary Agreement, such documents collectively demonstrating the authority of the Project SPE to enter into the Ancillary Agreement, to carry out the commitments made therein, and the authority of its undersigned representative to execute the Ancillary Agreement on behalf of the Project SPE.

ARTICLE 4 REPRESENTATIONS

Section 4.1 State's Representations. As a material inducement to LAEP to enter into this Agreement and the Phase I Ancillary Agreements, without which LAEP would not have entered into this Agreement or the Phase I Ancillary Agreements, nor would LAEP cause any future Project SPE to enter into any future Ancillary Agreements, the State represents and warrants to LAEP as of the Effective Date and will represent and warrant to LAEP and any future Project SPEs as of each subsequent Commencement Date for a Project to which the State is party:

a. The State has performed with respect to the Phase I Project an analysis of the Project Benefits expected to be derived from the Phase I Project and such analysis projects a Net Public Benefit to the State pursuant to Section 2.3. Prior to entering into an Ancillary Agreement with respect to a future Project, the State (if it will be a party thereto) will perform an analysis of the Project Benefits expected to be derived from such Project in its reasonable discretion, and such analysis shall project a Net Public Benefit to the State as a condition to the State entering into such Ancillary Agreement. Notwithstanding the

foregoing representations in this Section 4.1.a, the State will be entitled to reasonably rely upon any information and data provided by LAEP or a Project SPE in support of the State's analysis.

b. The State's obligations under the Contract Documents to which the State is or will be party will be made for the public purpose of supporting the State's current obligations and are part of a bargained for exchange with LAEP and the applicable Project SPE.

c. The State shall request adequate appropriation from the Legislature to fund the entire State Investment for the Phase I Project and each other Project to which the State will be a party throughout the entire Term of such Projects, but makes no representations, warranties or covenants, express or implied, that the Legislature will make such appropriations.

d. The State has with respect to the Phase I Ancillary Agreements, and with respect to future Ancillary Agreements to which the State will be a party will have, the requisite power and authority to enter into the Contract Documents and to carry out the terms hereof and thereof. The Commissioner will have the authority to execute such Contract Documents as the authorized representative of the State, and to bind the State to all the terms of such Contract Documents as such may be applicable to the State.

e. Each Contract Document to which the State is a party has been, and with respect to future Ancillary Agreements will be, duly authorized, executed and delivered by the State and constitutes or will constitute, as applicable, a legal, valid and binding obligation of the State, enforceable in accordance with its terms.

f. The State has obtained with respect to this Agreement and the Phase I Ancillary Agreements, and will obtain prior to the execution and delivery of any future Ancillary Agreements to which the State will be a party, all approvals required by the State, consistent with the courts of law of the State.

g. The State has taken or will take all necessary and proper action to authorize the execution, issuance and delivery of each Contract Document to which it is or will be a party, and the performance of the State's obligations hereunder and thereunder.

h. The execution of each Contract Document to which the State is or will be a party, and the performance by the State of its obligations hereunder and thereunder, are or will be within the powers of the State, and will not violate any provisions of law applicable to the State.

i. At the time of execution by the State of a Contract Document, the State is or will be in full compliance with all terms and conditions thereof, and no event that would constitute an event of default by the State (as described in such Contract Document) with respect thereto has occurred or will occur as of such time.

j. To the State's Knowledge, this Agreement contains no untrue or misleading statement of any material fact. The State has no Knowledge of any material fact or circumstance that adversely affects or, so far as the State can now reasonably foresee, will adversely affect the condition of the State or its ability to perform its obligations under any Contract Documents, that the State has not disclosed in writing to LAEP. All representations made herein by the State are true and accurate and remain in full force and effect.

k. The State agrees and acknowledges that (i) LAEP, Project SPEs and any Permitted LAEP Transferees will rely upon this Agreement and all applicable Ancillary Agreements when arranging financing for a Project; and (ii) the Persons financing all or any portion of a Project, including the applicable

Project SPE's Financier, will rely upon this Agreement and all applicable Ancillary Agreements in agreeing to finance all or any portion of a Project.

Section 4.2 LAEP Representations. As a material inducement to the State to enter into this Agreement and the Phase I Ancillary Agreements, without which the State would not have entered into this Agreement or the Phase I Ancillary Agreements, LAEP represents and warrants to the State as of the Effective Date and as of each subsequent Commencement Date:

a. LAEP is, and each future Project SPE will be, a duly and legally organized Delaware limited liability company, in good standing under the laws of the state of Delaware and is qualified to do business and is in good standing in the State, and has or will have all the requisite power and authority to enter into each Contract Document to which it is or will be a party and to carry out the terms hereof and thereof, with all powers and governmental licenses, authorization, qualifications, consents and approvals required to carry on its business in the State as now conducted or will acquire and possess all such required authority to carry on the business contemplated in the Contract Documents to which it is a party, and the officer or agent signing each Contract Document to which it is or will be a party has, and with respect to future Ancillary Agreements will have, the authority to execute such Contract Document as the authorized representative of LAEP and to bind LAEP to all the terms hereof and thereof.

b. Each Contract Document to which LAEP or future Project SPEs are or will be a party has been, and with respect to future Ancillary Agreements will be, duly authorized, executed and delivered by LAEP or the Project SPE, as applicable, and constitutes or will constitute, as applicable, legal, valid and binding obligations of LAEP or the Project SPE, as applicable, enforceable in accordance with its terms.

c. LAEP has taken or will take, and each future Project SPE will take, all necessary and proper action to authorize the execution, issuance and delivery of each Contract Document to which they are or will be a party and any other documents required hereby or thereby, and the performance of their obligations hereunder and thereunder.

d. The execution of each Contract Document to which LAEP or a future Project SPE is or will be a party and any other documents required hereby or thereby, and the performance by LAEP or a future Project SPE of its obligations hereunder and thereunder, are or will be within the powers of LAEP or the future Project SPE, as applicable, and will not violate any provisions of any law, regulation, decree or governmental authorization applicable to LAEP or the future Project SPE, as applicable, or any agreements of LAEP or the future Project SPE, as applicable, with any of its creditors.

e. At the time of execution by LAEP or a future Project SPE of a Contract Document, LAEP or the future Project SPE, as applicable, is or will be in full compliance with all currently applicable terms and conditions thereof, and no event that would constitute an event of default by LAEP (as described in such Contract Document) with respect thereto has occurred or will occur as of such time.

f. Except as may be otherwise disclosed in writing, there is no action, suit, investigation or proceeding pending, or to LAEP's Knowledge threatened, against LAEP before any court, arbitrator, or administrative or governmental body which could reasonably be expected to result in a material adverse change in LAEP's financial condition or operations, or in LAEP's ability to comply with its obligations under each Contract Document to which it is or will be a party or to participate in the transactions contemplated hereby or thereby.

g. To LAEP's Knowledge, this Agreement contains no untrue or misleading statement of any material fact. There is no material fact or circumstance known to LAEP that adversely affects or, so far as LAEP can now reasonably foresee, will adversely affect the condition of LAEP or a future Project SPE or

their ability to perform their obligations under the Contract Documents, that LAEP has not disclosed in writing to the State. All representations made herein by LAEP are true and accurate and remain in full force and effect.

- h.** LAEP certifies that it has no outstanding audit issues or findings.

ARTICLE 5 OBLIGATIONS

Section 5.1 State Obligations.

a. Compliance with Contract Documents. The State will comply with and perform all of its obligations arising under or related to the Contract Documents, subject to the terms, obligations and conditions thereof, including granting to LAEP or a Project SPE:

(1) the exclusive right to occupy, use, operate, manage, administer and maintain any Covered Facilities subject to Leases, including all Covered Assets at or within such Covered Facilities;

(2) the exclusive right to design, construct, install and finance Plant Improvements, if applicable, at Covered Facilities subject to Leases;

(3) the exclusive right to provide Services to Covered Facilities subject to Ancillary Agreements;

(4) the exclusive right to provide Thermal Services to Covered Facilities subject to Thermal Services Agreements;

(5) the exclusive right to design, construct, install and finance Energy Optimization Improvements at Covered Facilities subject to Leases or Facility Optimization Services Agreements;

(6) the exclusive right to utilize Thermal Energy-producing assets located at Covered Facilities subject to Leases to provide Thermal Energy to any Third Party Off-takers on terms and conditions as LAEP and the Project SPE may accept, provided, that all such agreements with Third Party Off-Takers will expressly state that the provision of Thermal Services to such Third Party Off-taker is subordinate to LAEP's and the Project SPE's obligation to provide Thermal Services to the relevant Covered Facility; and

(7) indemnify the LAEP Indemnitees in accordance with Section 13.3a.

b. Contract Document Payments. Subject to Section 5.3, the State will timely make all payments due and owing by it under all Contract Documents, in accordance with the terms and within the time periods provided therein. The payment terms for the Phase I Project are attached hereto as **Exhibit "L"**.

c. No Encumbrances. The State agrees not to encumber, transfer or otherwise dispose of all or any portion or component of a Covered Facility without first receiving a subordination and non-disturbance agreement with any new interest holder acknowledging and agreeing to abide by the terms of the applicable Contract Documents.

d. Cooperation; No Obstruction or Interference. The State will:

(1) provide LAEP, the Project SPE and all LAEP Persons with reasonable access to Covered Facilities throughout the Term of the applicable Ancillary Agreement(s), including personnel access and receipt of major equipment deliveries as may be necessary to provide Work and Services at, on or for such Covered Facilities, and if applicable for a reasonable period of time following termination of the Term of an Ancillary Agreement to remove any Future Equipment; and

(2) not allow any of its actions or those of any State Person to unreasonably interfere with the performance of Work or Services at, on or for Covered Facilities.

e. Responses to LAEP Inquiries. Unless otherwise specified in this Agreement, the State will respond in writing to all written inquiries received from LAEP as soon as reasonably practicable and in any event within ten (10) days of receipt of such inquiry or such longer period as the circumstances and content of the inquiry may reasonably require.

f. Exclusivity for Work and Services. During the Term, the State will not contract with or otherwise permit Persons other than LAEP, a Project SPE and their Affiliates and subcontractors to furnish or provide any work or services at a Covered Facility that are the same Work or Services furnished or provided by LAEP or a Project SPE to such Covered Facility pursuant to a Scope of Work or an Ancillary Agreement without obtaining the prior written consent of LAEP or the applicable Project SPE, which may be withheld or conditioned in LAEP's sole discretion; provided, however, that the foregoing will not apply in the event of circumstances that could not have been reasonably foreseen and which requires the State to take immediate action to prevent, correct or protect such Covered Facility from substantial loss.

Section 5.2 LAEP Obligations.

a. Compliance with Contract Documents. LAEP will, and will cause the Project SPEs to, comply with and perform all of its obligations arising under or related to the Contract Documents, subject to the terms, obligations and conditions thereof, including:

(1) occupy, use, operate, manage, administer and maintain any Covered Facilities subject to Leases;

(2) design, construct, install and finance Plant Improvements, if applicable, at Covered Facilities subject to Leases;

(3) provide Thermal Services to Covered Facilities subject to Thermal Services Agreements;

(4) design, construct, install and finance Energy Optimization Improvements at Covered Facilities subject to Facility Optimization Services Agreements;

(5) provide M & V Services, if applicable, to Covered Facilities subject to Leases and Facility Optimization Services Agreements;

(6) furnish to the State, prior to the commencement of any Work or Services under an Ancillary Agreement, certificates of insurance effecting coverages required of LAEP or a Project SPE as described in **Exhibit "E"** hereto or as provided under such Ancillary Agreement, and maintain such insurance in full force and effect for the duration specified therein;

(7) furnish to the State, prior to the commencement of any Improvements under an Ancillary Agreement, any payment and performance bonds required of LAEP or a Project SPE under such Ancillary Agreement; and

(8) indemnify the State Indemnitees in accordance with Section 13.3b.

b. Contract Document Payments. LAEP will, and will cause the Project SPEs to, timely make all payments due and owing by them under all Contract Documents, in accordance with the terms, and within the time periods, provided therein.

c. Cooperation; No Obstruction or Interference. LAEP will not allow any of its actions or those of any Project SPE or LAEP Person to unreasonably interfere with the activities of the State or any other Person on or about a Covered Facility.

d. Responses to Inquiries. Unless otherwise specified in this Agreement, LAEP will respond in writing to all written inquiries received from the State as soon as reasonably practicable, and in any event within ten (10) days of receipt of such inquiry or such longer period as the circumstances and content of the inquiry may reasonably require.

Section 5.3 Appropriation. All State obligations under this Agreement and the other Contract Documents to which the State is a party are subject to appropriation by the Legislature of sufficient funds therefor and the availability of funds following Legislative appropriation, and subject to termination due to unavailability of complete funding. The State agrees to request that the State Budget include sufficient funds for the State Investment for all then-current Projects to which the State is a party and to use its best efforts to affect the necessary Legislative appropriations for all then-current Projects to which the State is a party, but makes no representations, warranties or covenants, express or implied, that the Legislature will make such appropriations. Notwithstanding the foregoing, nothing in this Section 5.3 shall require the State to specifically identify a Project in its Budget request to the Legislature.

Section 5.4 Title to Future Equipment.

a. The State acknowledges and agrees that the purchase of all Future Equipment will be made in the name of LAEP, a Project SPE or Project SPE's Trustee.

b. Throughout the Term of the applicable Ancillary Agreement, LAEP the Project SPE or Project SPE's Trustee will retain legal title to all such Future Equipment as security for the State's or the applicable State Entity's obligations under such Ancillary Agreement (including payment of any Termination Fee that may be owed thereunder), notwithstanding the installation of that Future Equipment into a Covered Facility in connection with such Work.

c. Pursuant to La. R.S. 10:9-334, the State and each State Entity that becomes a party to an Ancillary Agreement (i) acknowledges the Future Equipment will be installed in a Covered Facility and classified as "fixtures" as defined by La. R.S. 10:9-334, (ii) disclaims any interest in all Future Equipment, (iii) acknowledges LAEP, the Project SPEs or Project SPE's Trustee shall be the owner of all Future Equipment, (iv) consents to LAEP, the Project SPEs or Project SPE's Trustee granting security interests in all Future Equipment to third parties, including Project SPE's Financier, and (v) acknowledges that prior to the installation of any Future Equipment in a Covered Facility, LAEP or the Project SPE will perfect a fixture filing and UCC-1 in the mortgage records of East Baton Rouge Parish and/or the Parish in which the Covered Facility is located evidencing any security interests granted by LAEP, the Project SPE or Project SPE's Trustee in Future Equipment.

d. Upon the expiration or earlier termination of an Ancillary Agreement in accordance with the terms thereof, and subject to payment by the State or the applicable State Entity of the applicable Termination Fee for termination prior to expiration in accordance therewith, title to and ownership of the Future Equipment installed pursuant to such Ancillary Agreement shall vest in the State or State Entity free and clear of any security interests granted by LAEP or the Project SPE.

ARTICLE 6 INITIAL PROJECT; ADDITIONAL PROJECTS

Section 6.1 **Phase I Project.** Simultaneous with the execution and delivery of this Agreement, the State and BREP are entering into the Phase I Project, which is evidenced by the Phase I Ancillary Agreements and the Phase I Project Adoption Agreement.

Section 6.2 **Addition of Covered Facilities.** During the period commencing on the Effective Date and continuing until the tenth (10th) anniversary thereof, any State Entity may desire that LAEP provide Work and/or Services to a Proposed Covered Facility as a new Project under this Agreement pursuant to an Adoption Agreement (which shall constitute an amendment to this Agreement), and from and after the tenth (10th) anniversary of the Effective Date no new Projects may be effected; provided, however, that the foregoing shall not prohibit or preclude the amendment or modification of any Projects in effect as of such date. In no event may any proposed Work or Services for future Projects under this Agreement be outside the scope of the SFO.

Section 6.3 **Notification.** Should a State Entity desire to have LAEP provide Work and/or Services on a Project, such State Entity may provide written notice to LAEP identifying the Proposed Covered Facility and the scope of Work or Services the State Entity desires LAEP to perform or furnish at the Proposed Covered Facility. The State Entity shall give LAEP reasonable access to the Proposed Covered Facility, and provide LAEP with such information reasonably requested, so that LAEP may perform due diligence to determine the feasibility of the Project at the Proposed Covered Facility.

Section 6.4 **Negotiations; Ancillary Agreements.** The State hereby grants and delegates to any other State Entity the power to negotiate on that State Entity's own behalf the scope of Work and Services to be performed by LAEP, and the terms and conditions of applicable Ancillary Agreements (including pricing, duration and termination fees), for Projects at Proposed Covered Facilities; provided, however, such Ancillary Agreements shall conform to the Cooperative Purchasing Provisions set forth in **Exhibit "C"** and the scope of Work and Services shall be within the scope of the SFO. Prior to or simultaneous with entering into the Ancillary Agreements for a Project, the State, but in all instances after obtaining all consents and undertaking all reviews specified in Section 6.5, the State Entity, LAEP and the applicable Project SPE shall enter an Adoption Agreement in the form of **Exhibit "F"**. Notwithstanding anything contained herein to the contrary, the effectiveness of this Agreement and any prior Ancillary Agreements shall not relieve any Party from obtaining any requisite approvals or consents, including the Office of State Procurement of the Division of Administration (or any successor agency or entity thereto). In addition to the foregoing, if the State Entity seeking a Project pursuant to this ARTICLE 6 is a publicly funded institution of higher education within the State, such State Entity shall obtain prior to or simultaneous with entering into the Ancillary Agreements for a Project, the approval of its governing board.

Section 6.5 **Approvals.** With respect to Projects with a State Entity acting pursuant to the delegated authority provided for in Section 6.4, after the State Entity and LAEP have agreed upon the terms and conditions of the Ancillary Agreements, the State Entity shall present the Project and the Ancillary Agreements to the Division of Administration. The Division of Administration will review and approve the Project and Ancillary Agreements to confirm that they are proper under this Agreement and within the scope of the SFO. All Projects (after finalization of the Ancillary Agreements and, with respect to Projects

with State Entities, after confirmation by the Division of Administration) shall be submitted for review to the Joint Legislative Committee on the Budget pursuant to La. R.S. 39:366.11.

Section 6.6 **Net Public Benefit.** Each Project agreed to by the Parties under this ARTICLE 6 shall have a Net Public Benefit determined by the applicable Parties consistent with **Exhibit “B”** hereto and such other terms, conditions and principles as such parties may mutually agree prior to entering into the Ancillary Agreements relating thereto, exclusive of any other Projects entered into by the Parties under the terms of this Agreement, and the amount of Net Public Benefit for a particular Project shall be determined annually subject to Section 2.3. Prior to the execution of any future Ancillary Agreement, the State Entity seeking such Project shall cause to be performed an independent review of the anticipated Project Benefits and State Investment for such Project to confirm that (a) the State Investment for such Project will be for a public purpose that comports with the governmental purpose for which the State Entity has the legal authority to pursue, (b) the anticipated value of the benefits of the Project to the State and its citizens will exceed the value of the State Investment undertaken for the Project so that all expenditures by the State Entity will not be gratuitous donations and (c) the State Entity will have a demonstrable, objective and reasonable expectation of receiving at least equivalent value in exchange for the State Investment for the Project. Such review shall be attached to and become part of the applicable future Ancillary Agreement.

ARTICLE 7 INSURANCE AND BONDS

Section 7.1 **Insurance.** Each Party shall maintain insurance of the kinds and in the amounts specified in an Ancillary Agreement on the Covered Facility thereunder and any components thereof, and any other assets and properties covered or affected by that Ancillary Agreement, and for the Work and Services to be performed thereunder.

Section 7.2 **Insurance Specifications.** For any insurance required to be obtained and maintained by LAEP or a Project SPE pursuant to an Ancillary Agreement, such insurance shall comply with the terms and conditions of **Exhibit “E”**.

Section 7.3 **Bonds.** The State shall have the right, to be set forth in an Ancillary Agreement, to require LAEP or a Project SPE to furnish a bond for the faithful performance of the Project and payment of obligations arising thereunder. Upon request of any Person appearing to be a beneficiary of a required bond under an Ancillary Agreement, LAEP will, or will cause the Project SPE to, promptly furnish a copy of such bond. Any bonds required of LAEP or a Project SPE pursuant to an Ancillary Agreement shall be recorded by LAEP or the applicable Project SPE in the manner and on the conditions specified in the Ancillary Agreement.

ARTICLE 8 NONDISCRIMINATION

LAEP agrees, and will cause each Project SPE, to abide by the requirements of the following laws (as amended), to the extent applicable: (i) Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964 and Equal Employment Opportunity Act of 1972; (ii) Federal Executive Order 11246; (iii) the Rehabilitation Act of 1973; (iv) the Vietnam Era Veteran’s Readjustment Assistance Act of 1974; (v) the Uniformed Services Employment and Reemployment Rights Act of 1994; (vi) Title IX of the Education Amendments of 1972; (vii) the Age Discrimination Act of 1975; (viii) the Fair Housing Act of 1968; and (ix) the Americans with Disabilities Act of 1990. LAEP further agrees that, to the extent required by Applicable Legal Requirements, it and the Project SPEs shall not discriminate in their employment practices and shall render their services without discrimination, and without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities.

ARTICLE 9
PROJECT SPEs; ASSIGNMENT AND TRANSFER

Section 9.1 **Project SPEs.** For each Project, LAEP may form or caused to be formed a Project SPE to enter into the applicable Ancillary Agreements and perform the applicable Work and Services. If formed, a Project SPE will be a Delaware limited liability company and an Affiliate of LAEP.

Section 9.2 **Assignment by LAEP.** Except as expressly provided in this Section, LAEP will not assign or otherwise transfer this Agreement and the Project SPEs will not assign or otherwise transfer any Ancillary Agreement, or any of their Agreement Rights without the State's (or the applicable State Entity's with respect to any Ancillary Agreements) prior written consent, which consent may be withheld or conditioned in the State's (or State Entity's, as applicable) sole discretion. Notwithstanding the foregoing, LAEP and Project SPEs may assign without the consent of the State (i) their rights to receive any payments from the State under this Agreement or any Ancillary Agreement to a Project SPE's Financier and (ii) all Ancillary Agreements comprising a single Project in their entirety to a Permitted LAEP Transferee. In the event of any valid transfer and/or assignment of any Agreement Rights to a Permitted LAEP Transferee, LAEP or the Project SPE, as applicable, shall be released of any obligations and/or duties related to the transferred or assigned Agreement Rights subsequent to the effective date of such transfer.

Section 9.3 **Assignment by the State.** The State will not assign or otherwise transfer its rights or obligations under the Contract Documents without LAEP's prior written consent, which consent may be withheld or conditioned in LAEP's sole discretion.

Section 9.4 **Assignment to a Project SPE's Financier.** Notwithstanding anything contained in this ARTICLE 9 or elsewhere in the Contract Documents to the contrary, (a) a Project SPE's Financier may assume for itself the Contract Documents in accordance with an applicable NDA; and (b) in no event may any Ancillary Agreement for a specific Project be assigned separate and apart from all of the then-effective Ancillary Agreements for such Project.

ARTICLE 10
TERM

Section 10.1 **Term; Ancillary Agreements Coterminous.**

a. This Agreement shall be effective once signed by all Parties and shall extend for a term of forty (40) years.

b. All Ancillary Agreements entered into by the Parties under the terms and conditions of this Agreement shall terminate upon the termination (but not expiration which shall be extended as provided in Section 10.1a) of this Agreement; provided, however, that this Agreement shall not terminate upon, and as a result of, the termination of any individual Ancillary Agreement.

Section 10.2 **Grounds for Termination.**

a. This Agreement.

(1) The State: The State may terminate this Agreement prior to the Expiry Date only upon the occurrence of an event of default by LAEP specified in Section 11.1.b., but only after compliance with the provisions of Section 10.3 and 10.4. The State acknowledges and agrees that it may not terminate this Agreement for any other reason, including as a result of a Non-Appropriation Event with respect to one or more particular Projects or of default by LAEP or a Project SPE under an Ancillary Agreement, the

Parties recognizing that (i)(A) termination of this Agreement would result in the termination of all Projects and their respective Ancillary Agreements and (B) a Non-Appropriation Event with respect to one particular Project and related Ancillary Agreement should not result in the termination of all Projects and their respective Ancillary Agreements and (ii) the rights and remedies of the State or any State Entity, as applicable, shall be as set forth in the applicable Ancillary Agreement. The foregoing shall not be deemed to impair or limit the ability and right of the State or any State Entity, as applicable, to terminate any particular Project and the related Ancillary Agreement upon a Non-Appropriation Event with respect thereto.

(2) LAEP: LAEP may terminate this Agreement prior to the Expiry Date only upon an event of default by the State specified in Section 11.1.a, but only after compliance with the provisions of Section 10.3. LAEP acknowledges and agrees that it may not terminate this Agreement for any other reason, including as a result of any event of default by the State or a Lessor an Ancillary Agreement.

b. Ancillary Agreements. An Ancillary Agreement may only be terminated by the parties thereto prior to the Expiry Date thereof only for the events described in such Ancillary Agreement, which may only include those events described on **Exhibit "D"**. The procedures for terminating an Ancillary Agreement, including notice and cure periods as applicable, shall be set forth in the Ancillary Agreement. In no event may the termination of one or more Ancillary Agreements for a specific Project affect or be grounds for termination of any Ancillary Agreement(s) for any other Projects, except upon a termination of this Agreement pursuant to Section 10.2.a.

c. Phase I Ancillary Agreements. In addition to the procedures for terminating a Phase I Ancillary Agreement as specifically provided therein, the State may terminate all of the Phase I Ancillary Agreements, but not less than all, upon either: (i) LAEP's or the Project SPE's failure to pay any amounts that may be owed to the State for the Phase I Project pursuant to the Net Public Benefit assurance described in Section 2.3 (Termination by State for Net Public Benefit Payment Default); or (ii) a Non-Appropriation Event with respect to the entire Phase I Project (Termination by State for Phase I Non-Appropriation). The amounts that would be owed by the State in such instances are set forth in Schedules 3 (Termination by State for Net Public Benefit Payment Default) and 4 (Termination by State for Phase I Non-Appropriation) on **Exhibit "M"**.

Section 10.3 Procedures for Termination. Should a Party seek to terminate this Agreement on the terms herein, after such Party has delivered the requisite Notices pursuant to Section 11.1 and all appropriate cure periods have expired in accordance therewith, such Party shall provide an additional Notice to the other Party of its intent to terminate this Agreement. The cancelling Party shall specify the Termination Date in its Notice, which Termination Date shall not be less than sixty (60) days from the date such additional Notice is received by the other Party.

Section 10.4 Termination Fees. The Termination Fees for the Phase I Project are set forth in **Exhibit "M"** attached hereto.

a. On the Termination Date of this Agreement, each Ancillary Agreement in effect as of such Termination Date shall automatically terminate. In such event, the State and each other State Entity that is party to an Ancillary Agreement will pay all applicable Termination Fees that may be due and owing under all applicable Ancillary Agreements as of such Termination Date (such terminations of the Ancillary Agreements shall be deemed Terminations by State for Cause) and all amounts that accrue under the Ancillary Agreements from the Notice of termination until the Termination Date (including all amounts owed for all Services provided thereunder for such period), by wire or ACH transfer of immediately available funds to such account(s) as the applicable Project SPE or the relevant Project SPE's Financier(s) shall direct the State or other State Entity in writing. The amount of the Termination Fee payable under an

Ancillary Agreement, if any, will be calculated in accordance with the terms and conditions of such Ancillary Agreement, except for the Termination Fee with respect to the Phase I Ancillary Agreements which is set forth on **Exhibit “M”** attached hereto.

b. THE STATE AND EACH OTHER STATE ENTITY THAT ENTERS INTO AN ANCILLARY AGREEMENT HEREUNDER AGREES THAT THEY ARE NOT ENTITLED TO WITHHOLD, OFFSET, ABATE, OR REDUCE THE AMOUNT OF PAYMENT OF ANY TERMINATION FEE DUE BY THEM UNDER A CONTRACT DOCUMENT FOR ANY REASON WHATSOEVER. THE STATE AND EACH OTHER STATE ENTITY THAT ENTERS INTO AN ANCILLARY AGREEMENT HEREUNDER SPECIFICALLY WAIVE ANY RIGHT OF WITHHOLDING, SET-OFF, ABATEMENT OR REDUCTION OR ANY OTHER DEFENSE AT LAW OR EQUITY TO ALL TERMINATION FEES DUE UNDER THE CONTRACT DOCUMENTS, AND AGREE THEY MUST PURSUE ANY AVAILABLE REMEDIES AGAINST LAEP AND/OR THE APPLICABLE PROJECT SPE WITHOUT WITHHOLDING, SET-OFF, ABATEMENT, OR REDUCTION IN AN AMOUNT LESS THAN THE ENTIRE TERMINATION FEES. IT IS THE INTENTION OF THE PARTIES THAT AT LEAST THE TERMINATION FEES WILL CONTINUE TO BE PAYABLE IN ALL EVENTS IN THE MANNER AND AT THE TIMES SET FORTH IN THE CONTRACT DOCUMENTS. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED IN A CONTRACT DOCUMENT WILL BE DEEMED TO PREVENT THE STATE OR A STATE ENTITY FROM OFFSETTING A PREVIOUS OVERPAYMENT BY THE STATE OR A STATE ENTITY TO LAEP OR A PROJECT SPE AGAINST A FUTURE PAYMENT OWED BY THE STATE OR STATE ENTITY, BUT ONLY TO THE EXTENT OF SUCH PREVIOUS OVERPAYMENT, AS REQUIRED UNDER LA. R.S. 39:72(B).

Section 10.5 Effect of Termination. At the end of the Term of this Agreement, except as provided in Section 11.2c, possession and use of all of Covered Facilities, and upon payment of all applicable Termination Fees and other amounts owed by the State Entities under the then-effective Ancillary Agreements, title to all Improvements constructed and Future Equipment installed in Covered Facilities pursuant thereto during the Term, will revert to the State or applicable State Entity, free and clear of any interest of LAEP, a Project SPE or Project SPE’s Financier or any other claim or lien arising by or through LAEP or a Project SPE. No termination of this Agreement excuses either Party from any liability arising out of any default as provided in this Agreement that occurred prior to such termination.

ARTICLE 11 EVENTS OF DEFAULT

Section 11.1 Events of Default.

a. By the State. Subject to Force Majeure as provided in Section 11.5, the occurrence of any of the following events shall constitute an event of default by the State under this Agreement:

(1) The State fails to cure its breach of an obligation under this Agreement within thirty (30) days after the State receives notice from LAEP of the breach; provided, that if such breach cannot reasonably be cured during such 30-day period, the State will be entitled to an additional thirty (30)-day period within which to cure its breach, so long as it will have begun to cure such breach within the initial thirty (30)-day period and is diligently pursuing such cure; or

(2) any of the State’s representations or warranties herein proves to have been misleading or false in any material respect when made and, within thirty (30) days of receipt of notice from LAEP, the State does not cure the underlying facts so as to make the representation or warranty correct and not misleading.

The Parties acknowledge and agree that under no circumstances shall any event of default by the State, a Lessor or a State Entity under (i) this Agreement that pertains to a specific Project cause or be deemed to cause an event of default by the State, a Lessor or a State Entity with respect to any other Project and (ii) one or more Ancillary Agreements for a specific Project constitute an event of default by the State or another State Entity under any Ancillary Agreements for any other Projects. Upon the occurrence of an event of default with respect to a particular Project, LAEP's and the applicable Project SPE's remedies shall be limited to the Contract Documents relating to that particular Project and shall not give rise to any termination rights of LAEP under Section 10.2.a(2).

b. By LAEP. Subject to Force Majeure as provided in Section 11.5, the occurrence of any of the following events shall constitute an event of default by LAEP under this Agreement:

(1) LAEP fails to cure its breach of an obligation under this Agreement (other than an obligation specified in Section 5.2.a or 5.2.b) within thirty (30) days after LAEP receives notice from the State of the breach; provided, that if such breach cannot reasonably be cured during such 30-day period, LAEP will be entitled to an additional thirty (30)-day period within which to cure its breach, so long as it will have begun to cure such breach within the initial thirty (30)-day period and is diligently pursuing such cure; provided, that if a Project SPE's Financier gives the State notice prior to the expiration of a cure period that such Project SPE's Financier intends to cure all such LAEP breaches, the State shall give such Project SPE's Financier thirty (30) days (or sixty (60) days if such breach cannot reasonably be cured during such 30-day period) following the State's receipt of such notice to cure breaches; provided, further, that the Parties acknowledge and agree that any breach by LAEP of its obligations specified in Sections 5.2.a and 5.2.b shall only constitute an event of default under the applicable Ancillary Agreement(s) and the State's or State Entity's, as applicable, remedies shall be those specified in the applicable Ancillary Agreement(s), and shall not constitute grounds to terminate this Agreement; or

(2) any of LAEP's representations or warranties herein proves to have been misleading or false in any material respect when made and, within thirty (30) days of receipt of notice from the State, LAEP does not cure the underlying facts so as to make the representation or warranty correct and not misleading.

The Parties acknowledge and agree that under no circumstances shall any event of default by LAEP or a Project SPE under (i) this Agreement that pertains to a specific Project cause or be deemed to cause an event of default by LAEP or such Project SPE with respect to any other Project and (ii) one or more Ancillary Agreements for a specific Project constitute an event of default by LAEP or another Project SPE under any Ancillary Agreements for any other Projects. Upon the occurrence of an event of default with respect to a particular Project, the State's and the applicable State Entity's remedies shall be limited to the Contract Documents relating to that particular Project and shall not give rise to any termination rights of the State under Section 10.2.a(1).

Section 11.2 Remedies.

a. For State. Upon the occurrence of an event of default by LAEP under this Agreement described in Section 11.1.b, the State may: (i) seek specific performance of LAEP's obligations hereunder; (ii) seek any other remedy available to the State in law, including injunctive relief and claims for damages; and (iii) seek to terminate this Agreement. The State's ability to terminate this Agreement for an event of default by LAEP under this Agreement described in Section 11.1.b shall be subject to the State's and any State Entities' party to Ancillary Agreements obligations to pay all applicable Termination Fees pursuant to Section 10.4.

b. For LAEP. Upon the occurrence of an event of default by the State under this Agreement described in Section 11.1.a that has not been cured within the time period specified in Section 11.1.a, LAEP may file a claim with the Commissioner in accordance with La. R.S. 39:1673; provided, however, that if such claim has not been heard within thirty (30) days of LAEP's submission, LAEP may pursue any remedy as provided in the Louisiana Procurement Code or as provided for under this Agreement.

c. Repossession of Future Equipment. If either Party exercises its remedy to terminate this Agreement resulting in the simultaneous termination of all Ancillary Agreements then in effect, and the State or another State Entity fails to pay a Termination Fee that is payable in connection therewith, the State will cooperate with LAEP and the Project SPEs and grant LAEP, the Project SPEs or Project SPE's Trustee (as applicable) reasonable access (which may be outside normal business hours and include non-Business Days) to the Covered Facilities for the purpose of repossessing and removing the Future Equipment, and the State acknowledges and agrees that neither LAEP, the Project SPEs nor Project SPE's Trustee shall have any obligation to replace any Future Equipment so removed, but LAEP will repair any damage caused by LAEP, a Project SPE or Project SPE's Trustee in the process of such removal; provided, that neither LAEP, the Project SPEs, Project SPE's Trustee nor any of their agents or representatives shall have any obligation to replace any Future Equipment so removed.

Section 11.3 Waiver of Consequential Damages. In no event, whether based on contracts, indemnity, warranty, tort (including, as the case may be, a Party's own negligence) or otherwise, will any Party be liable to any other Party or any other Party's Affiliates for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages, lost profits or lost revenues arising out of or related to any Contract Document except as specified in a Termination Fee or to the extent such consequential, indirect, punitive, exemplary, special or incidental damages, lost profits or lost revenues are payable to a third party in connection with an indemnification claim covered by ARTICLE 13.

Section 11.4 Delay or Omission; Waiver. No delay or omission in the exercise of any right or remedy accruing to any Party upon any breach of a Contract Document by another Party shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. No provision of a Contract Document will be considered waived unless the waiver is in writing and signed by an authorized representative of the Party granting the waiver. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.

Section 11.5 Force Majeure.

a. Subject to the provisions of Sections 11.5b and 11.5c, to the extent a Party is prevented by an event of Force Majeure from carrying out any of its obligations under a Contract Document and such Party gives Notice and details of the event of Force Majeure and the obligations it is prevented from performing to the other Party as soon as practicable (and in any event within five (5) Business Days after such event of Force Majeure first prevents performance by that Party), then the Party seeking relief will be temporarily excused during the continuance of the Force Majeure event from the performance of such of its obligations under the Contract Documents as are affected by the event of Force Majeure; provided, however, that no event of Force Majeure will excuse the monetary obligations of the Parties.

b. The Party affected by the event of Force Majeure will use Commercially Reasonable Efforts to eliminate or avoid the effects thereof and resume performing those obligations for which it was excused pursuant to Section 11.5a.

c. Notwithstanding the foregoing, LAEP acknowledges that a Covered Facility may be used from time to time as a shelter facility in events of extreme weather conditions, disasters or other catastrophic events (including hurricanes, flooding and fires), and that for such events LAEP and the Project SPEs will not be relieved of their obligations to perform Work or Services under Ancillary Agreements unless such event has created conditions at the Covered Facility that endanger life or property. Further, LAEP shall comply with the State's comprehensive fire, emergency, disaster preparedness, post-disaster operational and contingency response plans for the Covered Facility.

ARTICLE 12 AUDITS

Section 12.1 Audit. The State or State Entity party to a Project shall retain annually an Independent Evaluation Consultant to verify that the Net Public Benefit for each Service Year has been achieved by the Project SPE pursuant to Section 2.3. LAEP or the Project SPE shall reimburse the State or State Entity for the reasonable fees and expenses (based on prevailing industry standards, but in no event higher than rates approved by the Division of Administration's Office of Facility Planning and Control) of the Independent Evaluation Consultant. Prior to retaining an Independent Evaluation Consultant, the State or State Entity shall give written notice to LAEP and the Project SPE of the identity of the Independent Evaluation Consultant, the qualifications of the Independent Evaluation Consultant, a general description of the scope of work to be performed by the Independent Evaluation Consultant and the proposed fees to be charged by the Independent Evaluation Consultant. Additionally, prior to retaining the Independent Evaluation Consultant, the Legislative Auditor shall have the right to review the selection of the Independent Evaluation Consultant to ensure there is no direct conflict of interest by and among the Independent Evaluation Consultant and the State Entity engaging the Independent Evaluation Consultant. It is hereby agreed that the Legislative Auditor for the State and/or the Office of the Governor, Division of Administration auditors shall have the option of auditing all accounts of LAEP and a Project SPE which relate to this Agreement, as well as any books and records of the Independent Evaluation Committee. Books and records shall be maintained by LAEP for each Project SPE for a period of three (3) years after the date of final payment under the Ancillary Agreements related to such Project SPE and by any subcontractors on a Project for a period of three (3) years after the date of final payment under subcontracts related thereto.

Section 12.2 Confidential Proprietary or Trade Secret Information. To the extent permitted by law, all records containing proprietary or trade secret information which LAEP intends to be maintained by the State as confidential pursuant to La. R.S. 44:3.2 shall be submitted with a cover sheet that provides in bold type "DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION", and with each instance of information which LAEP believes to be proprietary or trade secret information clearly marked. Further, to the extent permitted by law, all information provided to the auditors pursuant to Section 12.1 shall be treated as confidential and privileged information, and if permitted by law, such information shall not be disclosed to third parties without LAEP or the Project SPE's prior written consent.

ARTICLE 13 EFFECT; LIABILITY; INDEMNIFICATION; CHOICE OF LAW; JURISDICTION

Section 13.1 Effects. This Agreement shall be binding upon and inure to the benefit of each of the Parties, including successors and assigns. Except for Project SPEs and State Entities that may enter into Ancillary Agreements with LAEP or a Project SPE, there are no third-party beneficiaries to this Agreement. Except as expressly stated herein (including the preceding sentence), no Person not a Party (including any owners or tenants of Covered Facilities, but excluding a Project SPE's Financier to the extent of assignment of any Agreement Rights to it pursuant to Section 9.4) shall be entitled to rely on or enforce any provision of this Agreement.

Section 13.2 No Personal Liability. Except to the extent provided by law, no covenant or agreement contained in a Contract Document shall be deemed to be the covenant or agreement of any official, officer, agent or employee of any Party hereto in his/her individual capacity, and neither the officers of any Party hereto nor any official or agent executing a Contract Document shall be liable personally with respect to a Contract Document or be subject to any personal liability or accountability by reason of the execution and delivery of such Contract Document. However, any Person may be held personally liable for such Person's individual fraudulent acts.

Section 13.3 Indemnification.

a. Indemnification by the State. The State will indemnify, defend and hold harmless the LAEP Indemnitees from and against any and all Losses, to the extent arising, directly or indirectly, from or in connection with (i) any breach by the State of its obligations, covenants, representations or warranties contained in any Contract Document; (ii) any negligent actions or negligent omissions by the State or a State Person in connection with State's performance of the Contract Documents; (iii) any Hazardous Materials introduced onto, or Environmental Condition created at, a Covered Facility other than by LAEP or a LAEP Person, including the Excluded Environmental Conditions; or (iv) any claims arising from or based on the violation by the State or a State Person of Applicable Legal Requirements in connection with the performance of State's obligations under the Contract Documents. Notwithstanding any provision to the contrary, if there is joint, concurrent or contributing fault, negligence, gross negligence or intentional misconduct by LAEP or any LAEP Indemnitee, as determined through a final adjudication, including any appeals, then the State's indemnity obligations hereunder will be limited to the proportionate fault of the State or any State Persons.

b. Indemnification by LAEP. LAEP will indemnify, defend and hold harmless the State Indemnitees from and against any and all Losses to the extent arising, directly or indirectly, from or in connection with (i) any breach by LAEP of its obligations, covenants, representations or warranties contained in any Contract Document; (ii) any negligent actions or negligent omissions by LAEP or a LAEP Person in connection with LAEP's performance of the Contract Documents; (iii) any Hazardous Materials introduced onto, or Environmental Condition created at, the Shaw Center Plant by LAEP or a LAEP Person; or (iv) any claims arising from or based on the violation by LAEP or a LAEP Person of Applicable Legal Requirements in connection with the performance of LAEP's obligations under the Contract Documents. Notwithstanding any provision to the contrary, if there is joint, concurrent or contributing fault, negligence, gross negligence or intentional misconduct by the State or any State Indemnitee, as determined through a final adjudication, including any appeals, then LAEP's indemnity obligations hereunder will be limited to the proportionate fault of LAEP or any LAEP Persons.

Section 13.4 Choice of Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Louisiana. Any action for injunctive relief, damages, or any other purpose other than those set forth in ARTICLE 14 shall be brought in the Nineteenth Judicial District Court in Baton Rouge, Louisiana.

**ARTICLE 14
DISPUTE RESOLUTION**

Section 14.1 Notice of Dispute. Prior to filing a claim with the Commissioner in accordance with La. R.S. 39:1673, any Claimant having a Dispute with a Respondent will provide a Notice, stating plainly and concisely:

a. the nature of the Dispute, including the Persons involved and Respondent's role in the Dispute;

- b. the legal basis of the Dispute (*i.e.*, the specific authority out of which the Dispute arises);
- c. Claimant's proposed remedy; and
- d. that Claimant will meet with Respondent to discuss in good faith ways to resolve the Dispute.

Section 14.2 Negotiation. The Parties will make every reasonable effort to have their respective senior employees or representatives meet "in person" and negotiate in good faith to attempt to resolve the Dispute within the thirty (30)-day period commencing on the date of such Notice. If the Parties are unable resolve the Dispute during such thirty (30)-day period, the chief procurement officer of such State Entity (if applicable, and if none, the State Procurement Directors (or successor position thereto)) shall issue a decision of the State Entity to LAEP and the Project SPE pursuant to La. R.S. 39:1673 (the "**State's Decision**") which shall (i) define the State Entity's resolution to the Dispute, (ii) provide the reasons for the action taken, and (iii) inform LAEP and the Project SPE of the right to administrative review and judicial review of the State's Decision.

Section 14.3 Administrative Review. If LAEP disagrees with the State's Decision or if the State's Decision is not rendered within sixty (60) days of written request for such State's Decision, LAEP or the Project SPE shall have the right to administrative review by the Commissioner pursuant by La. R.S. 39:1685. LAEP or the Project SPE shall file its appeal of the State's Decision within fourteen (14) days of the receipt of the State's Decision (or expiration of such 60-day period). If the Commissioner upholds the State's Decision after Administrative review, LAEP shall have the right to appeal the adverse decision of the Commissioner to the Nineteenth Judicial District Court pursuant to LA. R.S. 39:1691(C). EACH PARTY AGREES TO WAIVE A TRIAL BY JURY IN ANY DISPUTE GOVERNED BY THIS SECTION 14.3.

Section 14.4 Continuity of Service. Except as set forth in a Contract Document or prohibited by Applicable Legal Requirement, during the pendency of any Dispute, the Parties will nonetheless honor their commitments under the Contract Documents.

Section 14.5 Independent Engineer.

a. The Parties may jointly appoint an Independent Engineer from time to time. The Parties inability to agree on an Independent Engineer within ten (10) Business Days will constitute a Dispute that may be resolved in accordance with this ARTICLE 14.

b. In the event of a Dispute relating to the Work, the Services, or any other Dispute relating to the performance or non-performance by a Party of its obligations under a Contract Document (but specifically excluding a Party's indemnification obligations pursuant to Section 13.3), either Party may submit such Dispute to the Independent Engineer. The Independent Engineer will be instructed by both Parties that he or she is to act as an expert in engineering (and not as an arbitrator or mediator) to resolve in accordance with Applicable Standards only the Dispute submitted to the Independent Engineer.

c. As promptly as practicable, but no later than fifteen (15) days after submission of a Dispute to the Independent Engineer, each of State and LAEP will submit to the Independent Engineer a position paper in support of, or further explaining, its position with respect to a referred Dispute, a copy of which will be delivered to the other Party. The Independent Engineer will deliver to the Parties a written decision as promptly as practicable but: (i) not sooner than (A) the submission deadline for the Parties' position papers described in the preceding sentence or (B) if supporting position papers are submitted, ten (10) days

after the Independent Engineer's receipt of them; and (ii) in any event within thirty (30) days after the submission of a Dispute to the Independent Engineer.

d. A decision of an Independent Engineer under this Section 14.5 will not be binding on the Parties, but is intended to assist the Parties in reaching an agreement to resolve a Dispute in an expedited manner during the performance of Work or Services. A decision of an Independent Engineer will be without prejudice in any subsequent proceedings and will not prevent a Party from submitting the Dispute to the Nineteenth Judicial District Court pursuant to LA R.S. 39:1672.4.

e. An Independent Engineer will conduct an impartial review of the Dispute in such manner as the Independent Engineer thinks fit, including carrying out site inspections, review of documents and interviews with any relevant individuals, as necessary or prudent to rule on the Dispute. The Parties will comply with all reasonable requests from an Independent Engineer for additional information or documents. Any submission or documentation in respect to the Dispute will also be provided to the other Parties.

f. If requested by an Independent Engineer, the Parties will execute a reasonable engagement letter, including customary confidentiality provisions. Any retainer and other fees and expenses payable to an Independent Engineer will be split evenly between State and LAEP.

ARTICLE 15 PRIOR AGREEMENTS

Section 15.1 Prior Agreements. Any prior memorandum of understanding, offer, representation or agreement between the Parties hereto relating to the Projects is superseded by this Agreement and the other Contract Documents, and shall cease to be in effect upon the Effective Date. The Parties hereto agree that the submission of a draft of this Agreement or any other Contract Document by one Party to the other is not intended by either Party to be an offer to enter into a legally binding contract with respect to the Project. The Parties shall be legally bound with respect to the Projects only if and when the Parties have negotiated all of the terms and provisions of this Agreement and the Ancillary Agreements in a manner acceptable to each of them, and each of the Parties shall have fully executed and delivered to the other at least one original counterpart of each of the Contract Documents.

ARTICLE 16 NOTICE

Section 16.1 Notice. Any Notice required or permitted to be given under or in connection with this Agreement shall be in writing and shall be delivered by: (i) hand-delivered by courier, with signed receipt; (ii) mailed through the United States Postal Service, postage prepaid, first-class, with return receipt requested; or (iii) delivered by private, commercial carrier, such as Federal Express, with signature for delivery. All such communications shall be delivered to the officer, agent or representative (or their respective successor) identified in this Section at the address set forth below, or to such other Person and address as may be subsequently designated by such Party upon five (5) days written Notice to the other Parties.

To the State:

[Name]
The State of Louisiana
[Address]
Telephone: (____) ____-____

With a copy to: [Name]
[Company]
[Address]
Telephone: (____) ____-____

To LAEP: Michael T. Durham
LA Energy Partners, LLC
8555 United Plaza Boulevard, Suite 201
Baton Rouge, Louisiana 70809
Telephone: (225) 706-9280

With a copy to: Charles A. Landry
Fishman Haygood, LLP
100 North Street, Suite 800
Baton Rouge, Louisiana 70802
Telephone: (225) 706-4080

ARTICLE 17 MISCELLANEOUS

Section 17.1 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which will constitute one agreement. The signatures of any Party to a counterpart will be deemed to be a signature to, and may be appended to, any other counterpart. Digital signatures and other electronic signatures and copies of manual signatures transmitted by facsimile, e-mail or other electronic means will be binding and considered fully effective as if they were authentic original signatures.

Section 17.2 Severability. To the fullest extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under law, but if any provisions of this Agreement shall be prohibited or invalid under any law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 17.3 Further Assurances. From time to time, and at any time, at and after the Effective Date, each Party will execute, acknowledge and deliver such documents and assurances, reasonably requested by any other Party (in such form reasonably acceptable to the requested Party) and will take any other action consistent with the terms of any Contract Document that may be reasonably requested by a Party for the purpose of effecting or confirming any of the transactions contemplated hereby or thereby.

Section 17.4 Amendment. This Agreement may be amended only upon the written consent and approval of each Party, the Office of State Procurement and the Commissioner.

Section 17.5 Commercially Reasonable Efforts.

a. The Parties agree to use Commercially Reasonable Efforts to take or cause to be taken all actions and to do or cause to be done all things necessary or appropriate to consummate and make effective the transactions contemplated by the Contract Documents.

b. The Parties acknowledge that Commercially Reasonable Efforts will not be interpreted as requiring the initiation or settlement of litigation or the payment of money (other than usual and customary

expenses associated with negotiating and closing transactions of the nature set forth herein, including fees and expenses required to be paid under existing contractual obligations and processing or review fees and reimbursement for legal fees and other out-of-pocket expenses customarily required).

Section 17.6 No Authorship Presumption. Each of the Parties has had, or will have, an opportunity to obtain legal advice and negotiate the language of this Agreement and all other Contract Documents. No presumption shall arise, or adverse inference be drawn by virtue of authorship, and each Party hereby waives the benefit of any rule of law that might otherwise be applicable in connection with the interpretation of this Agreement or any other Contract Document, including to any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the Party whose counsel drafted that provision.

Section 17.7 Survival. Expiration or termination of this Agreement for any reason will not relieve the Parties of any obligation accrued or accruing prior to such expiration or termination, all of which will survive the expiration or termination of the Agreement.

Section 17.8 Good Faith. All rights, duties and obligations established by the Contract Documents will be exercised in good faith and in a commercially reasonable manner.

Section 17.9 Time of the Essence. Time is of the essence of this Agreement.

Section 17.10 No Third Party Benefit. Except as set forth in ARTICLE 13, no provisions in this Agreement are for the benefit of, or may be enforceable by, any Person other than the Parties hereto or to an Adoption Agreement and their permitted successors and assigns.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, this Cooperative Endeavor Agreement has been signed in four originals by the undersigned duly authorized representative, in the presence of the undersigned competent witnesses, on the dates indicated below.

WITNESSES:

STATE OF LOUISIANA

Signature

Printed Name

Signature

Printed Name

By: _____

Name: _____

Title: _____

Dated: [●], 2019

IN WITNESS WHEREOF, this Cooperative Endeavor Agreement has been signed in four originals by the undersigned duly authorized representative, in the presence of the undersigned competent witnesses, on the dates indicated below.

WITNESSES:

LA ENERGY PARTNERS, LLC

Signature

Printed Name

Signature

Printed Name

By: _____

Name: _____

Title: _____

Dated: [●], 2019

EXHIBIT “A”

DEFINED TERMS

“Additional Works” means any design and construction work arising from a Material Change.

“Adoption Agreement” means, for each Project, an Adoption Agreement entered into by and among the State, the applicable State Entity (if different from the State), LAEP and the Project SPE in the form attached as **Exhibit “F”**.

“Affiliate” means as applied to a Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person, where “control” means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting rights, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

“Agreement” or “CEA” means this Cooperative Endeavor Agreement by and between LAEP and the State dated [●], 2019, as may be amended from time to time in accordance herewith.

“Agreement Rights” means the rights and benefits accruing under this Agreement and the Ancillary Agreements and the benefits accruing thereunder.

“Ancillary Agreements” means any Adoption Agreements, Leases, Thermal Services Agreements, Facility Optimization Services Agreements and other agreements that the Parties or other Persons may enter into with respect to the performance of Work or Services at Covered Facilities.

“Annual Service Plan” means the annual plan for performing the Operation and Maintenance Services presented by a Project SPE to the State or a State Entity.

“Applicable Legal Requirements” means any law, act, rule, requirement, order, bylaw, ordinance, regulation, judgment, decree, or injunction of, or by any authority having jurisdiction over any Party or its obligations under the Contract Documents, or any Covered Facility subject to or upon which Work or Services are provided under a Contract Document, and all licenses, permits, tariffs, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations under a Contract Document.

“Applicable Standards” means with respect to a Party, or any of the performance obligations of a Party under the Contract Documents, as may be applicable, and as may be adjusted from time to time: (i) standards, practices, methods and procedures to a reasonable commercial standard, conforming to Applicable Legal Requirements and consistent with that degree of skill, care, diligence and prudence which would reasonably and ordinarily be expected from a qualified, skilled and experienced Person engaged in a similar type of undertaking under the same or similar circumstances; (ii) practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry in the country and State during the relevant time period; (iii) practices, methods and acts that, in the exercise of reasonable judgment on

the facts known (or that reasonably should have been known) at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition; (iv) standards, practices, methods and procedures set from time-to-time by the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) and any successor organization thereto; and (v) the standards of licensure set by the State, including the Louisiana Office of State Fire Marshal.

“Baseline Adjustment” means an adjustment to either the Baseline Consumption or Contract Baseline Consumption models that may be described in a Thermal Services Agreement associated with a Material Change. Baseline Adjustments, if applicable, will be established by a Project SPE, and agreed to by the State, in accordance with the methodology established by the International Performance Measurement and Verification Protocol for Non-Routine Baseline Adjustments.

“Base Rent” means the monthly rental payment made by LAEP or a Project SPE under a Lease.

“Billing and Measurement Meters” means meters that may be installed or utilized by a Project SPE to measure the consumption, temperature, and pressures of the Thermal Services made available to a Covered Facility and returned to the applicable Plant.

“Billing Month” means any whole or partial calendar month during which a Project SPE performs Services at a Covered Facility.

“BREP” means Baton Rouge Energy Partners, LLC, a Delaware limited liability company, and its permitted successors and assigns, which is the Project SPE for the Phase I Project.

“Business Day” means a day other than a Saturday, Sunday or day on which Federal Reserve member banks in Louisiana are authorized to close.

“Casualty Event” means any loss, damage or destruction of Covered Assets or any portion thereof (but specifically excluding any loss, damage or destruction of a Thermal Services Distribution System), or any other occurrence or event that prevents or limits the Covered Assets from operating in whole or in part, other than as a result of a Project SPE’s failure to perform any Services it is obligated to do pursuant to an Ancillary Agreement.

“Change Directive” means a written directive, order or instruction by a lessor to LAEP to make a Construction Change pursuant to a Lease.

“Change in Law” means the coming into effect of, or any change, amendment or modification (including repeal) to, any Applicable Legal Requirement (including any interpretation thereof) after the Effective Date of a Contract Document, of which compliance therewith would impact a Party’s ability to perform its obligations thereunder or require a variation in the quality, scope, methodology, cost or timing of the performance of services by any Party thereunder.

“Change Order” means with respect to any Improvements, a written instrument that is executed by the Parties and states their agreement with respect to a change in the construction or performance of the Improvements.

“Change Request” means a request by LAEP or a Project SPE to make a Construction Change.

“Claimant” means any Party having a Dispute with another Party.

“Commencement Date” means the effective date of an Ancillary Agreement. For a specific Project, all Ancillary Agreements evidencing such Project shall have the same Commencement Date.

“Commercially Reasonable Efforts” of a Party means those efforts consistent with the exercise of prudent business judgment of a Party when compared with that of a reasonable Person in like circumstances, specifically taking into consideration the operations conducted at a Covered Facility.

“Commissioner” means the State Commissioner of Administration.

“Concealed Condition” means, with respect to:

a. Any Covered Facility, any condition that is: (i) a concealed physical condition that differs materially from those indicated in any surveys or reports delivered by the applicable Lessor to LAEP or the Project SPE pursuant to the applicable Ancillary Agreement, or any surveys, reports, plans or other materials otherwise furnished by such Lessor to LAEP or the Project SPE during any applicable inspection period or the Term; or (ii) an unknown physical condition of an unusual nature, that differs materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character of the Work. Examples of conditions that would constitute Concealed Conditions with respect to a Covered Facility are cracked foundations and underground storage tanks; and examples of conditions that would not constitute Concealed Conditions with respect to a Covered Facility are tree roots, soil conditions and any conditions or requirements (including Applicable Legal Requirements) affecting any Improvements to be made at such Covered Facility; and

b. Any Covered Assets, components or materials that would not ordinarily be expected to be contained in a similarly situated and constructed utility plant as those located at the Covered Facility. Examples of conditions that would constitute Concealed Conditions with respect to Covered Assets are fuel tanks contained within a component that is not discoverable unless or until disassembling the component piece.

In all cases: (x) a condition shall only be deemed a Concealed Condition to the extent such condition materially and adversely affects LAEP’s ability or cost to perform any Work or Services at the Covered Facility; and (y) no condition shall be deemed a Concealed Condition to the extent it is reasonably inferable or foreseeable, given, as applicable, the nature of the Work, the Improvements or the Covered Assets.

“Construction Change” means a change to the work of designing and constructing Improvements from the Scopes of Work.

“Contract Documents” shall mean:

a. generally any and all of the documents, individually and collectively, contemplated by or in furtherance of the Projects, including:

- i. This Agreement and all Exhibits attached hereto;
- ii. any Adoption Agreements;
- iii. any Leases and all Exhibits attached thereto;

- iv. any Thermal Services Agreements and all Exhibits attached thereto;
- v. any Facility Optimization Services Agreements and all Exhibits attached thereto;
- vi. any resolutions or other authorizing documents of a Party; and
- vii. other instruments and agreements to be executed and delivered by the Parties as contemplated or otherwise permitted hereunder.

b. with respect to a specific Project, this Agreement (but excluding Exhibits “H” through “J”, which are the Phase I Ancillary Agreements) and all Ancillary Agreements entered into with respect to such Project, and shall not include any Ancillary Agreements relating to any other Projects.

“Covered Asset” means any equipment, asset or other property located at or within a Covered Facility that LAEP or a Project SPE has an obligation to provide any Services on pursuant to an Ancillary Agreement.

“Covered Asset Loss” means any loss, damage or destruction of the Covered Assets under a Lease or any portion thereof (but specifically excluding any loss, damage or destruction of the Thermal Services Distribution System), or any other occurrence or event that prevents or limits the Covered Assets from operating in whole or in part.

“Covered Facility” means any immovable property and/or improvements thereon that the State either owns or has an obligation or commitment to maintain that becomes subject to an Ancillary Agreement.

“Discounted Cash Flow Valuation” means the method used to estimate the value of an investment based on its future cash flows. Discounted Cash Flow Valuation analysis finds the present value of expected future cash flows using a discount rate. A present value estimate is then used to evaluate a potential investment.

“Dispute” means any dispute arising out of or relating to any Contract Document.

“Effective Date” means (a) with respect to this Agreement, the date this Agreement is executed by both Parties, and (b) with respect to an Ancillary Agreement, the stated effective date of such Ancillary Agreement specified therein.

“Electronic Document Archive” means an electronic repository created and maintained by LAEP or a Project SPE pursuant to a Lease, and includes all applicable drawings and reports concerning the applicable Covered Assets and Interior Facilities; M & V Services reports; written operating instructions for the Covered Assets; Covered Asset warranty information; applicable permits concerning the operation of the Covered Assets; the Operations Manual; and other records and information related to the Covered Facility and the Services performed for the Lessor thereunder.

“Emergency” means a circumstance that could not have been reasonably foreseen, and which requires a Party to take immediate action to prevent, correct or protect a Covered Facility or the assets therein and thereon from substantial loss or to prevent or minimize an interruption in Thermal Services.

“Energy Optimization Improvements” means Improvements performed within or to a Covered Facility intended to provide energy cost reductions, operational cost reductions, Thermal Energy load reductions, or capital renewal and deferred maintenance equipment replacements.

“Environmental Conditions” means, with respect to a Covered Facility, the presence to the extent not in compliance with Applicable Legal Requirements of any Hazardous Materials (i) due to release to the environment, (ii) under conditions indicative of a release to the environment or (iii) under conditions that pose a material threat of a future release to the environment.

“Excluded Asset” means any equipment, asset or other property located at or within a Covered Facility that LAEP or a Project SPE has no obligation to provide any Services on pursuant to an Ancillary Agreement.

“Excluded Environmental Conditions” means any Environmental Condition (i) existing on or under a Covered Facility as of the date such Covered Facility became subject to or covered by an Ancillary Agreement or (ii) not caused by LAEP, a Project SPE or a LAEP Person.

“Existing Covered Assets” means the Covered Assets existing and located within a Plant as of the Effective Date of the applicable Lease.

“Excused Interior Distribution System Malfunction” means a malfunction of any component located within, or incapacity or destruction of, a Covered Facility receiving Thermal Services pursuant to a Thermal Services Agreement that materially and adversely affects the provision of such Thermal Services.

“Excused Loss of Availability” means a Loss of Availability that is excused pursuant to the terms and conditions of the applicable Thermal Services Agreement.

“Excused Pipe Malfunction” means the malfunction of any piping equipment comprising part of the Thermal Services Distribution Systems.

“Expiry Date” means (a) with respect to this Agreement, the fortieth (40th) anniversary of the Effective Date, and (b) with respect to an Ancillary Agreement, the stated expiration date of such Ancillary Agreement specified therein.

“Extended Force Majeure Event” means an event of Force Majeure that lasts longer than thirty (30) consecutive days or for a period otherwise defined in an Ancillary Agreement.

“Facility Optimization Services Agreement” means an agreement between the State or a State Entity and LAEP or a Project SPE for the design and the construction of Energy Optimization Improvements to a Covered Facility.

“Fixtures” means goods, other than consumer goods and manufactured homes, that after placement on or incorporation in an immovable have become a component part of such immovable as provided in Civil Code Articles 463, 465, and 466, or that have been declared to be a component part of an immovable under Civil Code Article 467.

“Force Majeure” means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under any Contract Document,

including Acts of God; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; acts of public enemies; acts, failures to act or orders of any kind of any governmental authority acting in its regulatory or judicial capacity (but a violation by a Party of Applicable Legal Requirements shall not be an event of Force Majeure); changes in laws; insurrections; military action; war, whether or not declared; acts of terrorism; acts of sabotage; strikes, labor stoppages, or slowdowns or other industrial disturbances; or a shortage or unavailability of equipment, parts, materials, electricity, natural gas, water, communications, fuel or sanitary sewage capacity, whether or not caused by a supplier of such commodities. Nothing in this provision is intended to excuse either Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Notwithstanding anything in the Contract Documents to the contrary, Force Majeure will not mean any nonpayment under a Contract Document or any third-party agreement.

“FOSA Charge” means the periodic payments to a Project SPE for the Work and the Services performed by such Project SPE or a Project SPE Person under a Facility Optimization Services Agreement pursuant to the terms thereof.

“Future Covered Assets” means any Covered Asset purchased during the Term of a Lease as part of any Plant Improvements, Future Plant Improvements or renewals or replacements thereof as part of the Operation and Maintenance Services performed under an Ancillary Agreement for a Covered Facility.

“Future Equipment” means all equipment and asset purchases made by LAEP, a Project SPE or a Project SPE's Trustee during the Term of an Ancillary Agreement as a part of any Improvements, Renewal Work or Replacement Work under such Ancillary Agreement.

“Future Plant Improvements” means future Plant Improvements that LAEP or a Project SPE deems necessary or beneficial in furtherance of providing Thermal Services to a Covered Facility or Third Party Off-takers.

“Governor” means the Governor of the State of Louisiana.

“Hazardous Materials” means any substance, material, or waste which is (i) defined now or hereafter as a “pollutant,” “contaminant,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “industrial waste,” or other similar term or phrase under any Applicable Legal Requirement, (ii) any substance, the presence of which is on, under, or in a Covered Facility, or contained in any structure thereon, is prohibited or regulated by any Applicable Legal Requirement, or which requires investigation, removal, response or remediation under any Applicable Legal Requirement, and (iii) petroleum or any fraction or by-product thereof, asbestos, any polychlorinated biphenyl, urea formaldehyde foam insulation, radon or any other radioactive or explosive substance, methane, volatile hydrocarbons, or an industrial solvent.

“Improvements” means collectively Energy Optimization Services and Plant Improvements.

“Independent Engineer” means an individual who:

a. has not had a professional employment relationship during the five (5) years preceding, and at the time of, his or her engagement, with any Party or any Party's Affiliates, or a professional

consulting relationship during the three (3) years preceding, and at the time of, his or her engagement, with any Party or any Party's Affiliates;

b. is a certified professional recognized by the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) and registered Professional Engineer with a minimum of five (5) years' experience in the design, construction, maintenance, and operation of chilled water and heating water systems serving public buildings/multi-purpose buildings;

c. has sufficient educational and professional experience to opine as an expert on any Dispute submitted to him or her; and

d. is a registered professional engineer by the State.

"Independent Evaluation Consultant" means an entity that:

a. has been approved by the Division of Administration's Office of Facility Planning and Control;

b. has not had a professional relationship during the three (3) years preceding, and at the time of, its engagement, with LAEP or any of LAEP's Affiliates; and

c. has employed at least one (1) individual who (i) is a Certified Measurement and Verification Professional (CMVP) accredited from the Efficiency Valuation Organization (EVO) and the Association of Energy Engineers (AEE), (ii) has sufficient educational and professional experience to opine as an expert on the applicable Project Benefits and (iii) is a registered professional engineer by the State.

"Infrastructure Savings" means avoided capital costs realizable by the State or a State Entity pursuant to a Project.

"Interior Distribution System" means those portions of a Thermal Services Distribution System serving a Covered Facility that begin at the Points of Demarcation where Thermal Energy enters the Covered Facility and end at the Points of Demarcation where Thermal Energy leaves the Covered Facility.

"Investment Grade Audit Services" means the performance of a detailed and economic analysis performed by LAEP concerning a Covered Facility.

"Knowledge" means:

a. with respect to the State or a State Entity, the actual knowledge after reasonable inquiry of the individuals appointed as State Representatives or Lessor Representatives; and

b. with respect to LAEP or a Project SPE, the actual knowledge after reasonable inquiry of the individuals appointed as LAEP Services Period Representatives.

"LAEP" means LA Energy Partners, LLC, a Delaware limited liability company, and its permitted successors and assigns.

"LAEP Hazardous Materials" means any Hazardous Materials that LAEP or a Project SPE uses in providing Work or Services.

“LAEP Indemnitee” means LAEP, the Project SPEs, the Project SPE’s Financiers, their parent, subsidiaries, and Affiliated entities, and its and their respective members, directors, officers, employees, and agents, and any other LAEP Persons that are indemnified by the State pursuant to the terms of this Agreement or any Ancillary Agreement.

“LAEP Person” means any of the following:

- a. employees of LAEP and Project SPEs;
- b. any member of LAEP or a Project SPE and any of their or LAEP’s respective directors, officers, employees or agents in each case acting as such;
- c. any consultant or contractor engaged by LAEP or a Project SPE and any representative, advisor of LAEP or a Project SPE, in any such person’s capacity as a provider of services, work or materials directly or indirectly to LAEP Project SPE in connection with a Project, and any of their respective directors, officers, employees or agents; or
- d. any invitee of LAEP Project SPE or any LAEP Person referred to in clause a, b, or c above who enters upon a Project Site.

“LAEP Representative” means an individual appointed by LAEP or a Project SPE to serve as its representative under a Contract Document. A LAEP Representative with respect to a specific Ancillary Agreement shall not be deemed a LAEP Representative with respect to any other Ancillary Agreements unless LAEP states so in writing.

“LAEP Services Period Representative” means an individual appointed by LAEP or a Project SPE to serve as its representative on the Services Period Committee under a Contract Document. A LAEP Services Period Representative with respect to a specific Ancillary Agreement shall not be deemed a LAEP Services Period Representative with respect to any other Ancillary Agreements unless LAEP states so in writing.

“LAEP’s Plan of Correction” means a reasonably detailed plan formulated by LAEP or a Project SPE setting forth the actions LAEP or such Project SPE intends to undertake to resolve a Loss of Availability.

“Lease” means an agreement between the State or a State Entity and LAEP or a Project SPE for exclusive use of a Covered Facility containing Covered Assets capable of providing Thermal Energy.

“Lease Year” means each one-year period commencing from the Effective Date of a Lease to the date immediately preceding the anniversary thereof.

“Leased Property” means property leased to LAEP or a Project SPE by a Lessor for the provision of Thermal Services to Covered Facilities.

“Legislature” means the Legislature of the State of Louisiana.

“Lessor” means the State or a State Entity that leases a Covered Facility to LAEP or a Project SPE under a Lease.

“Lessor Event of Default” means an occurrence specifically described in a Lease.

“Lessor Representative” means an individual appointed by a Lessor to serve as its representative for matters related to a Lease.

“Lessor Service Period Representative” means an individual appointed by a Lessor as its representative on the Services Period Committee under a Contract Document. A Lessor Representative with respect to a specific Ancillary Agreement shall not be deemed a Lessor Representative with respect to any other Ancillary Agreements unless Lessor states so in writing.

“Liquidated Damages” means those certain damages recoverable by a State Entity due to the failure by LAEP or a Project SPE to provide Thermal Services to the State Entity, as further set forth in a Thermal Services Agreement.

“Lockbox” means the account designated by a Project SPE’s Financier for receipt of all payments owed by the State or a State Entity to LAEP or a Project SPE under any Contract Documents, which shall be established in the applicable Ancillary Agreement and may be changed from time to time only upon prior written approval of the applicable Project SPE’s Financier.

“Loss of Availability” means a concurrent failure to make Thermal Services available to a Covered Facility at the applicable Points of Demarcation in accordance with applicable Performance Standards and a space temperature or humidity not in compliance with Applicable Standards, all as set forth in the applicable Thermal Services Agreement.

“Losses” means any and all claims, liabilities, losses, damages, injuries, demands, actions, causes of action, suits, proceedings, judgments, and expenses, including reasonable attorneys’ fees, court costs, and other expenses, including those costs incurred at the trial and appellate levels and in any bankruptcy, reorganization, insolvency, or other similar proceedings, and other expenses.

“M & V Services” means measurement and verification services that may be provided by LAEP or a Project SPE to a Covered Facility pursuant to an Ancillary Agreement.

“Maintenance Event” means an event, occurrence or circumstance causing the need for Maintenance Repairs of any assets located at a Covered Facility for which LAEP or a Project SPE is responsible pursuant to, and subject to the terms and conditions of, an Ancillary Agreement, including to conform to Applicable Legal Requirements or Applicable Standards.

“Maintenance Repairs” means any repair or maintenance work (but not Renewal Work or Replacement Work) on any Covered Assets for which LAEP or a Project SPE is responsible pursuant to, and subject to the terms and conditions of, an Ancillary Agreement, including all necessary work to keep the applicable Covered Assets in good and safe working order in conformity with Applicable Legal Requirements and Applicable Standards in effect as of the Effective Date.

“Major Casualty Event” means a Covered Asset Loss under a Lease that in the reasonable judgment of LAEP constitutes fifty percent or greater ($\geq 50\%$) of the Thermal Services Capacity at such Covered Facility that was in place immediately prior to such Covered Asset Loss.

“Material Change” means a change in facts or circumstances that materially increased or decreases the amount of Thermal Services required at a Covered Facility as specifically identified in the applicable Thermal Services Agreement.

“Material Change Adjustment” means an adjustment to Thermal Services Charges pursuant to the Thermal Services Rate Design and the terms and conditions of a Thermal Services Agreement to reflect increases or decreases in the costs of providing Services thereunder as a result of a Material Change or as otherwise defined in an Ancillary Agreement.

“Material Change Notice” means Notice provided by LAEP or a Project SPE to the State or a State Entity of a Material Change under an Ancillary Agreement.

“Meters” means any Billing and Measurement Meters and/or the Utility Meters, to be installed under an Ancillary Agreement to measure the usage of Utilities, the provision of the Thermal Services, the Performance Standards and the Return Standards thereunder.

“Mortgage” means a mortgage, pledge or hypothecation by LAEP or a Project SPE of LAEP’s or such Project SPE’s interests in (a) a Lease, and/or (b) any Improvements under an Ancillary Agreement to the extent they constitute fixtures.

“Mortgagee” means Project SPE’s Financier(s) with respect to a specific Project.

“NDA” means a non-disturbance and attornment agreement or similar agreement between or among parties as described in an Ancillary Agreement.

“Net Public Benefit” means, for a specific Project, the amount in U.S. Dollars that the Project Benefits from such Project for a Service Year exceed the State Investment for such Project for the same Service Year.

“Non-Appropriation Event” means the failure by the Legislature to timely appropriate sufficient funds for the entire State Investment with respect to a Project, a veto of appropriated funding, or a reduction of such an appropriation required by law. A Non-Appropriation Event is determined on a Project by Project basis, and in no event shall the Non-Appropriation of one Project under an Ancillary Agreement affect the obligation of the State for the State Investment under any other Ancillary Agreements.

“Non-LAEP Hazardous Materials” means Hazardous Materials that may be present at a Covered Facility, but not including any LAEP Hazardous Materials.

“Notice” means notice required or permitted to be given under or in connection with a Contract Document, pursuant to the terms thereof.

“Operation and Maintenance Services” means (i) operation and monitoring and (ii) regular or scheduled maintenance as recommended by a manufacturer or otherwise consistent with Applicable Standards, in all instances to be performed by LAEP or a Project SPE on Covered Assets pursuant to an Ancillary Agreement.

“Operations Manual” means comprehensive manuals setting forth the operating procedures for the Covered Assets, which will be consistent with Applicable Standards.

“OSB” means the Office of State Buildings.

“OSB Buildings” means all facilities under the jurisdiction of the State’s Division of Administration operated and maintained by OSB.

“Party” and “Parties” means, with respect to a Contract Document, the specified Persons party thereto.

“Performance Standards” means the performance standards for the performance of Thermal Services under a Thermal Services Agreement.

“Permitted LAEP Transferee” means: (i) a Person that is an Affiliate of LAEP, Bernhard, LLC or Johnson Controls, Inc.; (ii) a Project SPE’s Financier pursuant to an NDA; or (iii) any Person approved by the State, which approval may be withheld or conditioned in the State’s sole discretion.

“Person” means and includes all juridical persons, whether corporate or natural, including individuals, corporations, limited liability companies, partnerships, limited liability partnerships, limited partnerships, joint ventures, proprietorships, trusts, governmental entities and unincorporated or informally organized associations.

“Phase I Ancillary Agreements” means the Phase I Project Adoption Agreement, the Shaw Center Plant Lease, the Shaw Center Thermal Services Agreement and the Phase I OSB Facility Optimization Services Agreement.

“Phase I OSB Buildings” means those State-owned office buildings in which Energy Optimization Improvements will be performed pursuant to the Phase I OSB Facility Optimization Services Agreement. A list of the Phase I OSB Buildings is attached as Schedule 2 of the Phase I OSB Facility Optimization Services Agreement.

“Phase I OSB Facility Optimization Services Agreement” means the Facility Optimization Services Agreement attached to this Agreement as **Exhibit “H”**, pursuant to which LAEP (through a Project SPE) will perform Energy Optimization Improvements to those State-owned office buildings identified therein.

“Phase I Project” means collectively, the projects, transactions, Work and Services described in the Phase I Ancillary Agreements.

“Phase I Project Adoption Agreement” means the Adoption Agreement entered into by and among the State, LAEP and BREP in the form attached as **Exhibit “G”**.

“Phase I Termination Fee” means the amount payable by the State in the event of the termination of any of the Phase I Ancillary Agreements or the CEA prior to the Expiry Date of the Phase I Ancillary Agreements, without regard to any amounts LAEP may be obligated to pay to or reimburse the State as provided in any Phase I Ancillary Agreement or the CEA, which amount is set forth on **Exhibit “M”**.

“Plant” means any central energy plant that may be leased to LAEP or a Project SPE pursuant to a Lease, which is comprised of the immovable property and Covered Assets and other assets located therein or thereon.

“Plant Improvements” means design, construction, installation and other improvements performed by LAEP or a Project SPE to or within a Covered Facility that is subject to a Lease.

“Plant Premises” means the immovable property that contains a Plant that is a Covered Facility, as may be more fully described on an exhibit to the applicable Ancillary Agreement.

“Points of Demarcation” means the points on a Thermal Services Distribution System at which responsibility for the operation and maintenance of such Thermal Services Distribution System and the risk of loss of Thermal Energy flowing through such Thermal Services Distribution System is allocated between the State or a State Entity, on the one hand, and LAEP or a Project SPE, on the other hand.

“Project Benefits” means the positive impacts to the State and its citizens described in Section 2.1.

“Project Site” means where Work and Services are to be performed under an Ancillary Agreement.

“Project SPE” means an Affiliate of LAEP that has one or more of the same members as LAEP formed solely for the purpose of entering into Ancillary Agreements with respect to a Project, and performing the Work and Services relating to such Project.

“Project SPE’s Financier” means any lenders or third parties, and successors thereto, providing financing to a Project SPE relating to the performance of such Project SPE’s obligations under any Contract Documents. A Project SPE’s Financier may be comprised of a consortium of lenders, each providing financing to a Project SPE for specific Ancillary Agreements and/or Projects.

“Project SPE’s Trustee” means any collateral agent or third party, and successors thereto, designated by a Project SPE or a Project SPE’s Financier to hold legal title to any Plant Improvements and/or Future Equipment acquired by or on behalf of a Project SPE during the term of an Ancillary Agreement. Project SPE’s Trustee may be a different Person for each Project.

“Projects” means projects entered into under the terms of this Agreement, including arrangements to, among other things, convey exclusive leasehold or concession rights to LAEP or a Project SPE over certain State-owned or -controlled utility plants and engage LAEP or a Project SPE to undertake Improvements to State-owned or -controlled buildings in order to derive Net Public Benefit and make such assets and properties more efficient and thus save the State significant amounts of money.

“Proposed Covered Facility” means a facility owned, leased, operated, managed and/or otherwise controlled by the State Entity where a State Entity may desire that LAEP or a Project SPE provide Work and/or Services under the terms of this Agreement.

“Public Services Invoice” means a public service provider’s invoice for water, electricity or natural gas consumption (demand and usage) at a Covered Facility.

“Remote Monitoring Services” means remote monitoring services performed by LAEP or a Project SPE with respect to the performance of Covered Assets pursuant to an Ancillary Agreement.

“Renewal Work” means corrective action to be performed by LAEP or a Project SPE to restore normal operation of a Covered Asset.

“Replacement Work” means corrective action to be performed by LAEP or a Project SPE to restore normal operation of a Covered Asset involving the complete replacement of such Covered Asset with new equipment of similar quality, capacity and performance.

“Respondent” means a Party with whom a Claimant has a Dispute.

“Return Standards” means the standards for Thermal Services returned to Covered Facilities at the Points of Demarcation, as may be set forth in a Thermal Services Agreement.

“Scheduled Maintenance Services” means the preventative maintenance of Covered Assets subject to a Lease.

“Scope of Work” means a description of the Work and or Services to be performed by LAEP or a Project SPE constituting Improvements.

“Service Year” means each one-year period during the term of an Ancillary Agreement commencing on the Commencement Date of such Ancillary Agreement or such other date specified in such Ancillary Agreement.

“Services” means all services to be performed by LAEP or a Project SPE under an Ancillary Agreement, which may include Thermal Services, M & V Services, Remote Monitoring Services, Operation and Maintenance Services, Maintenance Repairs, Renewal Work or Replacement Work.

“SFO” means Solicitation for Offers for a Cooperative Endeavor Agreement Number 300000812, for a public-private partnership regarding statewide chiller facilities and building energy conservation measures.

“Shaw Center” means the Shaw Center for the Arts, L.L.C., a Louisiana limited liability company.

“Shaw Center Building” means that certain building where BREP shall provide Thermal Services pursuant to the Shaw Center Thermal Services Agreement.

“Shaw Center Building Improvements” means the Improvements made to the Shaw Center Building by BREP as described in Exhibit “B” to the Shaw Center Plant Lease.

“Shaw Center CEA” means that certain Cooperative Endeavor Agreement dated effective as of November 15, 2002, by and among the State, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the City of Baton Rouge, Parish of East Baton Rouge, Shaw Center (formerly known as Arts Block Development, L.L.C.), Douglas Manship Sr. Theater Complex, L.L.C. (formerly known as Arts Block Theater, L.L.C.), Downtown Redevelopment, L.L.C., LSU Museum, L.L.C., The Baton Rouge Area Foundation, LSU Foundation and LSU Property Foundation.

“Shaw Center Plant” means that central energy plant that will be leased to BREP or a Project SPE by the State pursuant to the Shaw Center Plant Lease. The Shaw Center Plant is comprised of the immovable property, improvements and Covered Assets described on **Exhibit “A”** attached to the Shaw Center Plant Lease and any other assets located therein or thereon as of the Commencement Date of the Shaw Center Plant Lease.

“Shaw Center Plant Improvements” means the Improvements made to the Shaw Center Plant by BREP as described in Exhibit “B” to the Shaw Center Plant Lease.

“Shaw Center Plant Lease” means the Lease for the Shaw Center Plant, the Shaw Center Plant Improvements and the Shaw Center Covered Assets, the form of which is attached as **Exhibit “I”**.

“Shaw Center Thermal Services Agreement” means the Thermal Services Agreement by and between BREP or a Project SPE and the State for the provision of Thermal Services by BREP or a Project SPE for the Shaw Center Building, the form of which is attached as **Exhibit “J”**.

“State” means the State of Louisiana.

“State Budget” means the annual executive budget submitted each year by the Governor to the Legislature setting forth all proposed State expenditures.

“State Entity” means the State of Louisiana and all of the entities defined as an “Agency” under La. R.S. 39:2 (or any successor statute); provided, however, that the term “State Entity” will always include a publicly funded institution of higher education within the State.

“State Event of Default” means (a) with respect to this Agreement an occurrence described in Section 11.1.a, and (b) with respect to an Ancillary Agreement, an event of default by the State or a State Entity pursuant to the terms and conditions thereof.

“State Indemnitee” means the State, its Affiliated entities, and its and their respective officers, employees and agents, and any other State Persons that are indemnified by LAEP pursuant to this Agreement.

“State Investment” means the aggregate amount of payments owed by the State to LAEP or a Project SPE during the term of a Project pursuant to the relevant Contract Documents; provided, however, that in no event may any Termination Fee paid, payable or owed by the State or any State Entity constitute or be considered a State Investment for any purpose whatsoever.

“State Person” means any of the following:

- a. employees of State or a State Entity;
- b. any agent of State or a State Entity in each case acting as such;
- c. any representative or advisor of the State or a State Entity in any such person’s capacity as a provider of services, work or materials directly or indirectly to LAEP or a Project SPE in connection with the Project; or
- d. any invitee of the State, a State Entity or any State Person referred to in clause a, b, or c above who enters upon a Project Site.

“State Representative” means an individual appointed by the State to serve as its representative.

“State Services Period Representative” means an individual appointed by the State as its representative on the Services Period Joint Committee under a Contract Document. A State Representative with respect to a specific Ancillary Agreement shall not be deemed a State Representative with respect to any other Ancillary Agreements unless the State states so in writing.

“State Step-In Rights” means the rights of the State to “step into the shoes” of LAEP and take certain actions to provide Thermal Services under certain circumstances described in a Thermal Services Agreement.

“State’s Decision” means the decision of the State concerning the resolution of a Dispute pursuant to La. R.S. 39:1673.

“State’s Plan of Correction” means a reasonably detailed plan formulated by the State setting forth the actions the State intends to undertake, and anticipated timing therefor, to resolve a Loss of Availability of Thermal Services under a Thermal Services Agreement.

“Step-In Damages” means any direct expenses incurred to third parties by a State Entity exercising Commercially Reasonable Efforts in furtherance of, and directly related to, the repair or replacement of Covered Assets for the resolution of an Unexcused Loss of Availability pursuant to the State Step-In Rights in accordance with the terms and conditions of a Thermal Services Agreement.

“Substantial Completion Date” with respect to a Facility Optimization Services Agreement means the date specified therein.

“Term” means (a) with respect to this Agreement, the period from the Effective Date until the Expiry Date unless earlier terminated as provided herein, and (b) with respect to an Ancillary Agreement, the stated term of such Ancillary Agreement unless earlier terminated as provided therein.

“Termination Date” means the date on which (a) this Agreement (and in such instance all Ancillary Agreements thereunder) terminates prior to the Expiry Date pursuant to and in accordance with ARTICLE 10 hereof, or (b) an Ancillary Agreement terminates prior to the Expiry Date thereof pursuant to and in accordance with the provisions of such Ancillary Agreement.

“Termination Fee” individually and “Termination Fees” collectively mean the amount or amounts payable by the State in event of termination of an Ancillary Agreement prior to the Expiry Date of such Ancillary Agreement, in accordance with the terms and conditions of the applicable Ancillary Agreement and without regard to any amounts LAEP may be obligated to pay to or reimburse the State as provided in any Contract Document.

“Thermal Energy” means, as applicable for a Covered Facility, chilled water, steam and/or heating water.

“Thermal Services” means the provision by LAEP or a Project SPE of Thermal Energy for cooling, conditioning and heating of Covered Facilities under Thermal Services Agreements and to Third Party Off-takers.

“Thermal Services Agreement” means an agreement between the State or any subdivision thereof and LAEP or a Project SPE for the provision of Thermal Services to a Covered Facility.

“Thermal Services Capacity” means, from time to time throughout the Term of an Ancillary Agreement, the volume of Thermal Services that the applicable Plant is capable of delivering, after completion of any applicable Plant Improvements, and after completion of any future Additional Works that may be performed, in all cases taking into account any redundancies required by Applicable Legal Requirements or Applicable Standards.

“Thermal Services Charge” means, for any given Billing Month, the sum of the charges described in a Thermal Services Rate Design attached to a Thermal Services Agreement related to a Covered Facility.

“Thermal Services Distribution System” means, with respect to a Covered Facility, the distribution system and any interconnected extensions thereof, including all tower water piping, heating water piping and chilled water piping commencing and ending at Points of Demarcation, existing as of the applicable Commencement Date and any additions, improvements and replacements thereto installed by or on behalf of the State, LAEP or a Project SPE during the term of an Ancillary Agreement wherever located, providing Thermal Services to such Covered Facility.

“Thermal Services Invoice” means, for any given Billing Month, the invoice stating the Thermal Services Charge for a Covered Facility.

“Thermal Services Payment” means, for any given Billing Month, the amount the State actually pays on account of that Billing Month’s Thermal Services Invoice.

“Thermal Services Rate Design” means the rate design attached as an exhibit to a Thermal Services Agreement or any other Ancillary Agreement.

“Thermal Services Requirements” means the peak amount of Thermal Services necessary for the operation of a Covered Facility as adjusted from time to time in accordance with the Contract Documents.

“Third Party Distribution Systems” means any additions or modifications made to the Thermal Services Distribution System by LAEP or a Project SPE to deliver Thermal Services to Third Party Off-takers pursuant to Third Party Agreements.

“Third Party Off-taker” means any third party that receives Thermal Services from LAEP or a Project SPE utilizing the assets of a Covered Facility.

“Unexcused Loss of Availability” means any Loss of Availability under a Thermal Services Agreement or other Ancillary Agreement that is not an Excused Loss of Availability, as specified in such Ancillary Agreement.

“Utilities” means the following services:

- a. Energy and emergency power, including electricity and natural gas;
- b. Water;
- c. Storm water; and
- d. Telephone and data cabling.

“Utility Meters” means the meters that measure the usage of Utilities.

“Work” means any design, construction and installation work related to any Plant Improvements, Energy Optimization Improvements, Renewal Work or Replacement Work performed by LAEP or a Project SPE pursuant to an Ancillary Agreement.

EXHIBIT “B”

MASTER NET PUBLIC BENEFIT ASSURANCE

1. The Net Public Benefit for each Service Year is equal to Annual Savings minus the Annual Costs.
2. The Annual Savings is equal to the sum of the Annual Utility Savings, Annual Operation and Maintenance Savings, and Annual Infrastructure Savings.
3. The Annual Costs is equal to the Annual Project SPE charges.
4. The Annual Utility Savings is equal to the Covered Facilities Utility Savings for the applicable Service Year.
5. The Project SPE shall measure and verify the Covered Facilities Utility Savings for each Service Year in accordance with a measurement and verification plan developed by the Project SPE and approved by the State Entity (“Measurement and Verification Plan”).
6. The Measurement and Verification Plan shall comply with the procedures established by the then most current version of the International Performance Measurement and Verification Protocol (“IPMVP”), the Federal Energy Management Protocol (“FEMP”), or such other protocols that may be mutually agreed upon by the parties, as of the Effective Date of the Ancillary Agreement.
7. The Measurement and Verification Plan shall convert measured utility consumption savings to measured cost savings using utility unit costs established by the Measurement and Verification Plan for the applicable Service Year.
8. The Annual Operation and Maintenance Cost Savings shall be equal to the amounts established by the Measurement and Verification Plan for the applicable Service Year.
9. The Annual Infrastructure Savings is equal to the amounts established by the Measurement and Verification Plan for the applicable Service Year.

EXHIBIT “C”

MASTER COOPERATIVE PURCHASING PROVISIONS

1. Opt-In Provisions: Pursuant to the terms and conditions of the CEA and this **Exhibit “C”**, any State Entity shall be able to opt into the CEA and enter into future Ancillary Agreements pursuant to ARTICLE 6 of the CEA or any other agreement necessary to facilitate a Project pursuant to the terms and conditions of the CEA.
2. Net Public Benefit Assurance: For each Project, a Project SPE shall provide the State Entity with a Net Public Benefit assurance pursuant to the requirements of **Exhibit “B”**.
3. Non-Appropriation: All State obligations related to any Project are subject to appropriation by the Legislature of sufficient funds therefor and the availability of funds following appropriation by the Legislature, and a Project may be terminated due to non-appropriation of complete funding.
4. Thermal Services: The following guidelines shall apply to any Project whereby a Project SPE provides Thermal Services pursuant to a Lease and Thermal Services Agreement:
 - a. Lease: When assets are leased (“**Leased Plant**”) as a part of a Project pursuant to a Lease, the Lease Value and Base Rent thereunder shall be calculated as follows:
 - i. Lease Value: The fair value of the lease of Covered Assets (the “**Lease Value**”) shall be established using the Discounted Cash Flow Valuation Method based on the term of the Lease, equipment capacity, market firm and non-firm rates for Thermal Services, and an appropriate capitalization rate (overall rate of return) not exceeding eight percent (8%).
 - ii. Base Rent: The annual Base Rent payments shall be established using the Lease Value, the term of the Lease, and an appropriate interest rate not less than four and one-half percent (4.5%).
 - iii. Utilities: The State Entity will be responsible for the provision and payment of all Utilities to and used by the Covered Assets.
 - b. Thermal Services Agreement: When a Thermal Services Agreement is utilized as part of a Project, the Thermal Services Charges thereunder shall be established as follows:
 - i. Base Thermal Services Charge: The Base Thermal Services Charge shall be established by using the estimated Thermal Services consumption of the Covered Facility(ies) under the applicable Thermal Services Agreement and the market firm and non-firm rates for Thermal Services used to establish the Lease Value.
 - ii. Thermal Services Charge: The Thermal Services Charge shall be equal to the Base Thermal Services Charge less the Rent Payment.
 - iii. Third Party Off-Taker Purchased Utility Cost Reimbursement: The Project SPE shall reimburse the State Entity for any additional utility costs incurred by the State Entity

as a result of the SPE's use of the Covered Assets to produce Thermal Services for Third Party Off-takers.

- iv. Most Favored Nations Clause: In the event Thermal Services are provided to a Third Party Off-taker from a Covered Asset, the Project SPE shall reduce the State Entity's Thermal Services Charges to the lowest rate for Thermal Services charged by the Project SPE to a Third-Party Off-taker provided by the same Covered Asset.
- v. Net Payment: The net payment due from a State Entity under a Thermal Services Agreement shall be equal to the Thermal Services Charge for the applicable Covered Facility(ies) minus the Third Party Off-taker Purchased Utility Cost Reimbursement.

5. Project Terms and Conditions.

- a. Transparent Pricing: The Project SPE shall price all Work and Services under an Ancillary Agreement in an open-book pricing manner.
- b. Termination Provisions: The State Entity and the Project SPE have the right to terminate Ancillary Agreements prior to the Expiry Date thereof under the terms and conditions set forth in **Exhibit "D"** – Master Termination Provisions.
- c. Step-In Rights: The State Entity has the right to step-in and operate Covered Assets in the event of an Unexcused Loss of Availability of Thermal Services after expiration of an appropriate grace period not exceeding four (4) hours.
- d. Liquidated Damages: The State Entity has the right to assess and collect reasonable liquidated damages ("Liquidated Damages"). The Project SPE shall be liable to the State Entity for Liquidated Damages in the event of an Unexcused Loss of Availability that exceeds a five (5) hour grace period. In no event shall the Liquidated Damages within a single Service Year exceed the total Thermal Services Charge within the same Service Year.
- e. Hudson Initiative Sub-Contractor Participation: The Project SPE shall use reasonable efforts to utilize Hudson Initiative sub-contractors in the provision of Work or Services under an Ancillary Agreement as appropriate.
- f. Operation and Maintenance Costs: The amounts charged by the Project SPE for Operation and Maintenance Services shall be competitive in the market.

6. Project Costs. Costs of a Project under the CEA shall be allocated to the Parties as follows:

- a. Development Costs: The Project SPE shall recover its actual out of pocket development costs.
- b. Investment Grade Audit Fees and Expenses: The Project SPE shall charge fees for Investment Grade Audit Services based on the Project's scale. The total Project SPE charge for Investment Grade Audit Service fees and expenses shall not exceed twenty-five cents (\$0.25) per square foot of floor space, subject to reasonable adjustments for inflation not exceeding the corresponding change in the applicable Consumer Price Index.

- c. Savings Assurances: The Project SPE shall charge fees for providing Savings Assurances. The total Project SPE charge for Savings Assurances shall not exceed five percent (5%) of the Assurance amount.
- d. Design Fees: The Project SPE shall charge fees for design services. The total charge for design services by the Project SPE shall not exceed the State of Louisiana fee scale in effect on the Effective Date of the Ancillary Agreements for the Project.
- e. Commissioning Fees and Expenses: The Project SPE shall charge fees for commissioning services based on the Project's scale. The total charges for commissioning fees and expenses by the Project SPE shall not exceed three percent (3%) of the total cost of the Project (inclusive of all costs and fees under this Section 6) (the "**Project Costs**").
- f. Retro-Commissioning Fees and Expenses: The Project SPE shall charge fees for retro-commissioning services based on the Project's scale. The total charge for retro-commissioning fees and expenses by the Project SPE shall not exceed fifty cents (\$0.50) per square foot of floor space of the Covered Facility, subject to reasonable adjustments for inflation not exceeding the corresponding change in the applicable Consumer Price Index.
- g. Project Management Fees and Expenses: The Project SPE shall charge fees for project management services based on the Project's scale. The total charge for project management fees and expenses by the Project SPE shall not exceed five percent (5%) of the total Project Costs.
- h. Performance and Payment Bonds: The State Entity has the right to require the Project SPE to furnish performance and payment bonds for the implementation of Improvements; provided, however, the Project SPE shall recover the costs thereof.
- i. General and Administrative Costs: The Project SPE shall recover its general and administrative costs; provided, however, the total Project SPE charge for general and administrative costs shall not exceed ten percent (10%) of the total Project Costs.
- j. General Conditions: The Project SPE shall recover its general conditions costs; provided, however, the total Project SPE charge for general conditions shall not exceed eight percent (8%) of the total Project Costs.
- k. Insurance: The Project SPE shall procure insurance in accordance with the requirements set forth in **Exhibit "E"** – Master Insurance Requirements and the applicable Ancillary Agreements.
- l. Prime Contractor Fee: The Project SPE shall charge a Prime Contractor Fee; provided, however, the Prime Contractor Fee shall not exceed five percent (5%) of the total Project Costs.
- m. Contingency: The Project SPE may include a contingency allowance in its pricing; provided, however, the contingency allowance shall not exceed seven percent (7%) of the total Project Costs.

EXHIBIT “D”

MASTER TERMINATION PROVISIONS

An Ancillary Agreement may be terminated by a party thereto prior to the Expiry Date of such Ancillary Agreement only upon the following circumstances:¹

1. By the State or the applicable State Entity.
 - a. Termination by State for Cause.
 - b. Termination by State for Convenience.
 - c. Termination by State for Necessity.
 - i. Upon a Major Casualty Event affecting an applicable Covered Facility.
 - ii. Upon a Change in Law that substantially prevents the State or the applicable State Entity from continuing its performance of substantially all of its obligations under the Ancillary Agreement for the remainder of the Term.
 - iii. Upon an Extended Force Majeure Event that substantially prevents a party to the Ancillary Agreement from continuing its performance of substantially all of its obligations under the Ancillary Agreement.
 - d. Termination by State for Non-Appropriation.
2. By LAEP/Project SPE.
 - a. Termination by LAEP/Project SPE for Cause.
 - b. Termination by LAEP/Project SPE for Necessity.
 - i. Upon a Major Casualty Event affecting an applicable Covered Facility.
 - ii. Upon a Change in Law that substantially prevents the Project SPE from continuing its performance of substantially all of its obligations under the Ancillary Agreement for the remainder of the Term.
 - iii. Upon an Extended Force Majeure Event that substantially prevents a party to the Ancillary Agreement from continuing its performance of substantially all of its obligations under the Ancillary Agreement.

¹ Notwithstanding anything contained in this Exhibit “D”, an Ancillary Agreement may expressly limit or expand the circumstances upon which such Ancillary Agreement may be terminated.

EXHIBIT “E”
MASTER INSURANCE REQUIREMENTS

When a Party is required under an Ancillary Agreement to procure and maintain insurance, such policies shall conform to the following requirements, unless otherwise waived in writing by the Commissioner and the applicable State Entity:

1. GENERAL

- (a) Prior to commencing any Work or Services under an Ancillary Agreement for which Project SPE is required to provide insurance (“Required Insurance”), Project SPE shall provide the Commissioner and the applicable State Entity proof of the Required Insurance coverages. All insurers shall be authorized to do business in the State, and shall have an A. M. Best’s rating of no less than A-:VI; provided, however, that the foregoing rating requirement will be waived for any workers’ compensation coverage.
- (b) Thirty (30) days prior notice of cancellation, except in the event for non-payment of premium, shall be given to the Commissioner and the applicable State Entity by registered mail, return receipt requested, on each policy of Required Insurance. All notices will name Project SPE and any applicable subcontractor and identify the applicable Ancillary Agreement.

2. INSURANCE REQUIREMENTS

- (a) Insurance coverage to be provided by Project SPE, and any other insurance described below shall be furnished, if required by an Ancillary Agreement, with the following minimum limits:
 - (i) Workers’ Compensation - Statutory - in compliance with the workers’ compensation law of the State. Exception: Employer’s liability to be \$1,000,000 when Work or Services to be provided under an Ancillary Agreement are over water and involve maritime exposures.
 - (ii) Commercial General Liability Insurance:
 - (1) Commercial General Liability insurance, including Personal and Advertising Injury Liability and Products and Completed Operations Liability, shall have a minimum limit per occurrence based on the project value. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. Claims-made form is unacceptable.
 - (2) The aggregate loss limit must apply to each project. ISO form CG 25 03 (current form approved for use in Louisiana), or equivalent, shall also be submitted. The State project number, including part number, and project name shall be included on this endorsement.

NOTE: On the certificate of insurance, under the description of operations, the following wording will be provided: THE AGGREGATE LOSS LIMIT APPLIES TO EACH PROJECT, or a copy of ISO form CG2503

(Current form approved for use in the State) shall be submitted. State project number, including part number, and project name shall be included on the endorsement.

COMBINED SINGLE LIMIT (CSL) - AMOUNT OF INSURANCE REQUIRED

<u>New Building/ Renovation</u>	<u>Projects up to \$1,000,000</u>	<u>Projects over \$1,000,000 up to \$10,000,000</u>	<u>Projects over \$10,000,000</u>
Each Occurrence Minimum Limit	\$1,000,000	\$2,000,000	\$4,000,000
Per Project Aggregate	\$2,000,000	\$4,000,000	\$8,000,000

(iii) Business Automobile Liability Insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage, unless otherwise indicated. This insurance shall include for bodily injury and property damage the following coverages:

- (1) Owned automobiles;
- (2) Hired automobiles; and
- (3) Non-owned automobiles.

(iv) Builder’s Risk Insurance/Installation Floater

- (1) Builder’s Risk Insurance and/or an installation floater shall be in an amount equal to the amount of the construction contract including any amendments and shall be upon the entire work included in the contract. The policy shall provide coverage equivalent to the ISO form number CP 10 20, Broad Form Causes of Loss (extended, if necessary, to include the perils of wind, earthquake, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure). The policy must include architects’ and engineers’ fees necessary to provide plans, specifications and supervision of work for the repair and/or replacement of property damage caused by a covered peril, not to exceed 10% of the cost of the repair and/or replacement.
- (2) The policy shall include the interest of the contracting State Entity, the Division of Administration (“DOA”), Project SPE and any applicable subcontractors as their interest may appear.
- (3) Policies insuring Projects involving additions, alterations or repairs to existing buildings or structures must include an endorsement providing the following:
 - a. In the event of a disagreement regarding a loss covered by this policy which may also be covered by the State of Louisiana policy of self-insurance or any commercial property insurance policy

purchased by the State of Louisiana, Office of Risk Management (“ORM”) covering in excess of the State of Louisiana, policy of self-insurance, this company agrees to follow the following procedure to establish coverage and/or the amount of loss:

Any party to a loss may make written demand for an appraisal of the matter in disagreement. Within 20 days of receipt of written demand, this company and either ORM or its commercial insurance company shall each select a competent and impartial appraiser and notify the other of the appraiser selected. The two appraisers will select a competent and impartial umpire. The appraisers will then identify the policy or policies under which the loss is insured and, if necessary, state separately the value of the property and the amount of the loss that must be borne by each policy. If the two appraisers fail to agree, they shall submit their differences to the umpire. A written decision by any two shall determine the policy or policies and the amount of the loss. Each insurance company (or ORM) agrees that the decision of the appraisers and the umpire if involved, will be binding and final and that neither party will resort to litigation. Each of the two parties shall pay its chosen appraiser and bear the cost of the umpire equally.

- (4) If the Project SPE is obligated, or if the Parties chose to cause the Project SPE, to repair or replace the property loss, then all such property losses shall be payable to and adjusted with the Project SPE. Otherwise, all property losses shall be payable to and adjusted with the applicable State Entity party to the Project.
- (v) An umbrella policy may be used to meet the minimum requirements required in Section 2(i), 2(ii), and 2(iii) of this Exhibit.
- (vi) Asbestos Abatement Liability (required only when asbestos abatement is specifically included in the Work or Services): Project SPE or a subcontractor who will be doing the asbestos abatement as outlined in the applicable Ancillary Agreement shall obtain and maintain such liability coverage for the asbestos abatement hazard and exposure with minimum limits of \$1,000,000 per occurrence for the duration of the Project. The policy shall name the State of Louisiana, the contracting State Entity, all State departments, agencies, boards and commissions as an additional insured for the Project. The policy shall be written on an “occurrence” form. Claims-made coverage is unacceptable. The insurance company shall have an A.M. Best rating of at least A-:VI or better.
- (vii) Contractor’s Pollution Liability: Coverage to indemnify for bodily injury, property damage, or amounts which the Project SPE, its employees, its agents, or its Contractors are legally obligated to pay for cleanup/remediation work arising out of the construction. Such insurance will have minimum limits of \$2 million any one claim and in the aggregate and will remain in full force and effect from the onset of construction and five years completed operations extension after any Project Completion.

- (viii) Professional Liability: Coverage on a Project-specific or practice policy basis covering the liability for acts, errors, or omissions arising in connection with any Project for not less than \$2 million any one claim and in the aggregate. Such insurance, which may be purchased and maintained by the lead design engineer or the contractor itself, will remain in full force and effect during the performance of the construction and for a period of five (5) years after Project completion. The State is to be named on any such policies as an indemnified party, but only to the extent of Project SPE's negligence.
- (b) Any deductibles or self-insured retentions must be declared to and approved by the Commissioner.

3. RISKS AND INDEMNIFICATIONS ASSUMED BY PROJECT SPE

- (a) Neither the acceptance of the completed Work or Services nor payment therefor shall release Project SPE and its subcontractor(s) from their obligations from the insurance requirements or indemnifications contained in this Agreement or an applicable Ancillary Agreement.
- (b) All policies and certificates of insurance shall be approved by the Commissioner and the contracting State Entity prior to the inception of any Work or Services.
- (c) If at any time any of the foregoing policies shall be or become unsatisfactory to the Commissioner, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Commissioner, Project SPE shall, upon notice to that effect from the Commissioner, promptly obtain a new policy, submit the same to the Commissioner for approval and submit a certificate thereof as hereinabove provided. Failure of Project SPE to take out and/or maintain or the taking out and/or maintenance of any required insurance, shall not relieve Project SPE from any liability under this Agreement or the applicable Ancillary Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of Project SPE concerning indemnification. The Commissioner reserves the right to require complete, certified copies of all required insurance policies, at any time.

4. SUBCONTRACTORS

Project SPE shall include all subcontractors as insureds under its policies or shall furnish separate certificates from each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

5. CERTIFICATE OF INSURANCE

Project SPE shall furnish the Commissioner with certificates of insurance for the Required Insurance. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates of insurance must also contain the following in the "Description of Operations" section:

- (a) If Project SPE is acting as a General Contractor, then so state.
- (b) If Project SPE is a specialty contractor, then so state and provide the list of specialties for which Project SPE is insured.

6. OTHER INSURANCE PROVISIONS

The policies of Required Insurance are to contain, or be endorsed to contain, the following provisions:

- (a) General Liability and Automobile Liability Coverages
 - (i) The contracting State Entity, the DOA, and their respective officers, officials, employees, Boards and Commissions and volunteers are to be added as “additional insureds” as respects liability arising out of activities performed by or on behalf of Project SPE; products and completed operations of Project SPE, premises owned, occupied or used by Project SPE. The coverage shall contain no special limitations on the scope of protection afforded to the contracting State Entity, the DOA, and their officers, officials, employees or volunteers.
 - (ii) It is understood that the business auto policy under “Who is an Insured” automatically provides liability coverage in favor of the State.
 - (iii) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the contracting State Entity, the DOA, and their officers, officials, employees, Boards and Commissions or volunteers.
 - (iv) Project SPE’s insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability.
- (b) Workers’ Compensation and Employer’s Liability Coverage: The insurer shall agree to waive all rights of subrogation against the contracting State Entity, the DOA, and their respective officers, officials, employees and volunteers for losses arising from Work or Services performed by Project SPE under an Ancillary Agreement.
- (c) All Coverages: Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the Commissioner.
- (d) Project SPE or the applicable subcontractor’s insurer will have no right of recovery or subrogation against the State or the contracting State Entity, it being the intention of the Parties that Required Insurance shall protect both Parties and be the primary coverage for any and all losses covered by the Required Insurance.
- (e) The contracting State Entity and the DOA shall be named as an additional insured as regards to negligence by Project SPE (ISO Forms CG 20 10, Current form approved for use in Louisiana).
- (f) The insurance companies issuing the policy or policies shall have no recourse against the contracting State Entity and the DOA for payment of any premiums or for assessments under any form of policy.

7. ANCILLARY AGREEMENTS

- (a) When a Lease is contained in the Ancillary Agreements, the following are additional insurance requirements:
- (i) **Property Insurance:** A policy or policies of insurance covering the Leased Property, including any financing obligations, against loss or damage by fire, lightening, earthquake, collapse, vandalism and malicious mischief against such other perils as are included in so-called “extended coverage”, which insurance shall be not less than one hundred percent (100%) of the full replacement cost of the Leased Property without deduction for depreciation, but in no event shall the amount of the insurance be at any time less than the full replacement cost adjusted to comply with any applicable co-insurance provisions of any such insurance policy. If the Leased Property is damaged and a decision is made not to rebuild or replace, in which case the policy converts from a replacement cost basis to actual cash value (“ACV”) basis, any proceeds of insurance shall be remitted to facility owner.
 - (ii) **Boiler & Machinery Insurance:** Boiler and machinery insurance coverage against loss or damage by explosion of steam boilers, pressure vessels and similar apparatus now or hereafter installed on the Leased Property premises, including any betterments or improvements, in an amount not less than the replacement cost value.
 - (iii) **Flood Insurance:** Unless otherwise agreed upon by the State Entity and the Project SPE, flood insurance coverage shall be provided by the Lessee on the first floor and below for all Projects, except as otherwise noted. The sub-limit for flood coverage shall not be less than ten percent (10%) of the total contract cost per occurrence. If flood is purchased as a separate policy, the limit shall be ten percent (10%) of the total contract cost per occurrence (with a max of \$500,000 if NFIP). Coverage for roofing projects shall not require flood coverage.
 - (iv) **Site Pollution Insurance:** Coverage to indemnify for bodily injury, property damage, or amounts which the Project SPE, its employees, its agents, or its Contractors are legally obligated to pay for cleanup/remediation work arising out of the construction. Such insurance will have minimum limits of \$2 million any one claim and in the aggregate and will remain in full force and effect from the onset of construction and five years completed operations extension after any Project completion.
 - (v) **Professional Liability Insurance:** Coverage on a Project-specific or practice policy basis covering the liability for acts, errors, or omissions arising in connection with the any Project for not less than \$2 million any one claim and in the aggregate. Such insurance, which may be purchased and maintained by the lead design engineer or the contractor itself, will remain in full force and effect during the performance of the construction and for a period of five (5) years after Project completion. The State is to be named on any such policies as an indemnified party, but only to the extent of Project SPE’s negligence.
- (b) Additional insurance may be required on an individual basis for specific Ancillary Agreements.

- (c) If such additional insurance is required for a specific Ancillary Agreement, that requirement will be described in the “Insurance” provisions of the applicable Ancillary Agreement (or an exhibit thereto).

EXHIBIT “F”

FORM OF ADOPTION AGREEMENT FOR PROJECTS

This **ADOPTION AGREEMENT** (this “**Agreement**”) dated effective [●], 20[●] (the “**Effective Date**”), by **THE STATE OF LOUISIANA** (the “**State**”), appearing herein through [●], the Commissioner of Administration, Division of Administration, duly authorized and empowered by the State, [[**STATE ENTITY**], a [●] (“**State Entity**”), **LA ENERGY PARTNERS, LLC**, a Delaware limited liability company (“**LAEP**”), and [**PROJECT SPE**], a Delaware limited liability company (“**Project SPE**”). Each of State, [State Entity], LAEP and Project SPE is sometimes individually or collectively referred to as a “**Party**” or the “**Parties**”.

RECITALS

WHEREAS, the State and LAEP have entered into a Cooperative Endeavor Agreement dated [●], 2019 (the “**CEA**”), which establishes a framework pursuant to which the State and LAEP may collaborate on [the lease or concession of State-owned or -controlled facilities for/conservation measures for State-owned or -controlled facilities through] the provision of Work and Services by LAEP, directly or indirectly through Affiliates of LAEP;

WHEREAS, pursuant to ARTICLE 6 of the CEA, the Parties desire to enter into the Project described in Section 2;

WHEREAS, pursuant to the Project, Project SPE will provide certain Work and/or Services to the [State/State Entity] under the terms and conditions of the CEA and the Project Ancillary Agreements described in Section 3;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the Parties, each intending to be legally bound, hereby agree as follows:

1. **Defined Terms.** Capitalized terms used but not otherwise defined in this Agreement have the meanings ascribed to them in **Exhibit “A”** of the CEA. Defined terms will be given their common and ordinary meanings when they appear uncapitalized in the text. Undefined terms will be given their common and ordinary meanings pursuant to custom and industry parlance. Notwithstanding the foregoing, any terms defined in this Agreement that conflict with the definition provided in **Exhibit “A”** of the CEA shall have the meanings provided herein.

2. **Project.** [Description of the Project.]

3. **Project Ancillary Agreements.** The [State’s/State Entity’s] and Project SPE’s rights and obligations relating to the Project are set forth in this Agreement, and the following Ancillary Agreements (the “**Project Ancillary Agreements**”):

(a) [list of all Ancillary Agreements comprising the Project].

4. **Project SPE.** Project SPE is an Affiliate of LAEP and has been formed solely for the purpose of entering into the Project Ancillary Agreements and performing the Work and/or Services thereunder.

5. **Adoption of the CEA.** The terms and conditions of the CEA are adopted as if otherwise set forth herein. Further, each of the [State Entity] and Project SPE hereby acknowledge and agree to be bound by the terms and conditions thereof as if each were a party thereto, it being understood that the State Entity shall abide by and be subject to the terms and conditions of the CEA applicable to the State, and Project SPE shall abide by and be subject to the terms and conditions of the CEA applicable to LAEP. Notwithstanding the foregoing, each of the State and LAEP acknowledges and agrees that any breach or default by the State Entity or Project SPE hereunder or under any Project Ancillary Agreement shall not constitute or be deemed to constitute a breach or default by the State or LAEP under the CEA, respectively.

6. **Continuing Disclosure Obligations.** [Any disclosure obligations of the State or State Entity to be identified here.]

7. **Net Public Benefit.** Prior to entering into this Agreement and the Project Ancillary Agreements, the [State/State Entity] has performed the independent review described in Section 6.5 of the CEA. A copy of such review is attached hereto as **Exhibit "A"**.

8. **Assignment.** No Party will assign or otherwise transfer its rights or obligations under this Agreement except in accordance with the provisions of ARTICLE 9 of the CEA.

9. **Governing Law; Dispute Resolution.** This Agreement, and all matters arising out of or relating to it shall be construed in accordance with and governed by the laws of the State of Louisiana. Any Dispute arising under or related to this Agreement or the Project will be resolved pursuant to the dispute resolution provisions contained in ARTICLE 14 of the CEA.

10. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which will constitute one agreement. The signatures of any Party to a counterpart will be deemed to be a signature to, and may be appended to, any other counterpart. Digital signatures and other electronic signatures and copies of manual signatures transmitted by facsimile, e-mail or other electronic means will be binding and considered fully effective as if they were authentic original signatures.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

STATE OF LOUISIANA

By: _____

Name: _____

Title: _____

[STATE ENTITY]

By: _____

Name: _____

Title: _____

LA ENERGY PARTNERS, LLC

By: _____

Name: _____

Title: _____

[PROJECT SPE]

By: _____

Name: _____

Title: _____

EXHIBIT “G”

PHASE I PROJECT ADOPTION AGREEMENT

This **ADOPTION AGREEMENT** (this “**Agreement**”) dated effective [●], 2019 (the “**Effective Date**”), by **THE STATE OF LOUISIANA** (the “**State**”), appearing herein through Jay Dardenne, the Commissioner of Administration, Division of Administration, duly authorized and empowered by the State, **LA ENERGY PARTNERS, LLC**, a Delaware limited liability company (“**LAEP**”), and **BATON ROUGE ENERGY PARTNERS, LLC**, a Delaware limited liability company (“**BREP**”). Each of State, LAEP and BREP is sometimes individually or collectively referred to as a “**Party**” or the “**Parties**”.

RECITALS

WHEREAS, the State and LAEP have entered into a Cooperative Endeavor Agreement dated [●], 2019 (the “**CEA**”), which establishes a framework pursuant to which the State and LAEP may collaborate on the lease or concession of State-owned or -controlled facilities and conservation measures for State-owned or -controlled facilities through the provision of Work and Services by LAEP, directly or indirectly through Affiliates of LAEP;

WHEREAS, pursuant to ARTICLE 6 of the CEA, the Parties desire to enter into the Project described in Section 2;

WHEREAS, pursuant to the Project, BREP will provide certain Work and/or Services to the State under the terms and conditions of the CEA and the Project Ancillary Agreements described in Section 3;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the Parties, each intending to be legally bound, hereby agree as follows:

1. **Defined Terms.** Capitalized terms used but not otherwise defined in this Agreement have the meanings ascribed to them in **Exhibit “A”** of the CEA. Defined terms will be given their common and ordinary meanings when they appear uncapitalized in the text. Undefined terms will be given their common and ordinary meanings pursuant to custom and industry parlance. Notwithstanding the foregoing, any terms defined in this Agreement that conflict with the definition provided in **Exhibit “A”** of the CEA shall have the meanings provided herein.

2. **Project.**

(a) **Shaw Center.** The State is party to the Shaw Center CEA, pursuant to which the parties thereto designed, constructed and operate a multi-use museum, theatre and arts complex known as “The Shaw Center for the Arts”. Pursuant to the Shaw Center CEA, the State provides, at the State’s cost and expense, thermal services and certain operation, maintenance, repair, renewal and enhancement services to the Shaw Center Building. The State provides thermal services to the Shaw Center Building from existing assets situated within the Shaw Center Plant located near the Shaw Center Building, and delivers the same through established distribution systems comprising piping, valves and fittings running between the Shaw Center Building and the Shaw Center Plant. LAEP desires to operate and maintain the Shaw Center Plant and the assets contained therein in exchange for the exclusive lease of the Shaw Center

Plant and all assets therein, and provide Thermal Services to the Shaw Center Building on a priority usage basis and thereby relieve the State of its current financial and operational undertaking of providing thermal services to the Shaw Center Building. As further consideration by LAEP to lease the Shaw Center Plant and assume certain State obligations under the Shaw Center CEA, LAEP desires to provide specific enhancements and improvements to the Shaw Center Building. The State expects to recognize financial benefits from the enhancements made to and improvements installed in the Shaw Center Building, including (i) utility and operational cost savings, (ii) Infrastructure Savings, and (iii) improved functionality and reliability of the Shaw Center Building (the “**Shaw Center Project**”).

(b) **OSB Facility Optimization Services.** The State has identified specific buildings where the operational costs and deferred maintenance and replacement costs have limited the State’s ability to operate and maintain those buildings and LAEP desires to provide specific enhancements and improvements to such buildings to mitigate the State’s operational costs and risks therein. The State expects to recognize financial benefits from the enhancements made to and improvements installed in the buildings, including (i) utility and operational cost savings, (ii) Infrastructure Savings, and (iii) improved functionality and reliability of the buildings (the “**OSB Project**”, collectively with the Shaw Center Project, the “**Project**”).

3. **Project Ancillary Agreements.** The State’s and BREP’s rights and obligations relating to the Project are set forth in this Agreement, and the following Ancillary Agreements (together with this Agreement, the “**Project Ancillary Agreements**”):

- (a) Shaw Center Plant Lease;
- (b) Shaw Center Thermal Services Agreement; and
- (c) Phase I Facility Optimization Services Agreement.

4. **Project SPE.** BREP is an Affiliate of LAEP and has been formed solely for the purpose of entering into the Project Ancillary Agreements and performing the Work and/or Services thereunder.

5. **Adoption of the CEA.** The terms and conditions of the CEA are adopted as if otherwise set forth herein. Further, BREP hereby acknowledges and agrees to be bound by the terms and conditions thereof as if it were a party thereto, it being understood that BREP shall abide by and be subject to the terms and conditions of the CEA applicable to LAEP. Notwithstanding the foregoing, the State acknowledges and agrees that any breach or default by BREP hereunder or under any Project Ancillary Agreement shall not constitute or be deemed to constitute a breach or default by LAEP under the CEA.

6. **Continuing Disclosure Obligations.** During the Term of the Project, the State shall deliver or cause to be delivered to BREP within two hundred ten (210) days of the State’s fiscal year end, comprehensive annual financial reports, prepared by the Division of Administration and audited by an independent certified public accountant within the Office of the Legislative Auditor. Such reports shall be prepared in accordance with generally accepted accounting principles as prescribed by the Governmental Accounting Standards Board.

7. **Net Public Benefit.** Prior to entering into this Agreement and the Project Ancillary Agreements, the State has performed the independent review described in Section 2.3 and **Exhibit “K”** to the CEA.

8. **Assignment.** No Party will assign or otherwise transfer its rights or obligations under this Agreement except in accordance with the provisions of ARTICLE 9 of the CEA.

9. **Governing Law; Dispute Resolution.** This Agreement, and all matters arising out of or relating to it shall be construed in accordance with and governed by the laws of the State of Louisiana. Any Dispute arising under or related to this Agreement or the Project will be resolved pursuant to the dispute resolution provisions contained in ARTICLE 14 of the CEA.

10. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which will constitute one agreement. The signatures of any Party to a counterpart will be deemed to be a signature to, and may be appended to, any other counterpart. Digital signatures and other electronic signatures and copies of manual signatures transmitted by facsimile, e-mail or other electronic means will be binding and considered fully effective as if they were authentic original signatures.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

STATE OF LOUISIANA

By: _____

Name: _____

Title: _____

LA ENERGY PARTNERS, LLC

By: _____

Name: _____

Title: _____

BATON ROUGE ENERGY PARTNERS, LLC

By: _____

Name: _____

Title: _____

EXHIBIT “H”

PHASE I OSB FACILITY OPTIMIZATION SERVICES AGREEMENT

SEE NO. 4

EXHIBIT "T"
SHAW CENTER PLANT LEASE

SEE NO. 2

EXHIBIT "J"

SHAW CENTER THERMAL SERVICES AGREEMENT

SEE NO. 3

EXHIBIT “K”

PHASE I NET PUBLIC BENEFIT ASSURANCE PROVISIONS

1. The Net Public Benefit for each Service Year is equal to the Annual Savings minus the Annual Costs.
2. The Annual Savings is equal to the sum of the Annual Utility Savings, Annual Operation and Maintenance Savings, and Annual Infrastructure Savings.
3. The Annual Utility Savings is equal to the sum of the Annual Shaw Utility Savings and the Annual FOSA Utility Savings.
4. BREP shall measure and verify the Annual Shaw Utility Savings and the Annual FOSA Utility Savings for each Service Year in accordance with the Phase I Measurement and Verification Plan.
5. The Phase I Measurement and Verification Plan shall be developed by BREP and approved by the State as follows:
 - a. BREP shall develop the Phase I Measurement and Verification Plan in a manner compliant with the procedures established by the most current version of the International Performance Measurement and Verification Protocol (“IPMVP”) as of the Effective Date of the Phase I Ancillary Agreements.
 - b. The Phase I Measurement and Verification Plan shall utilize either IPMVP Option A: Partially Measured Retrofit Isolation or IPMVP Option C: Whole Meter as indicated in **Figure 1** below:

Building	Building Location	IPMVP Option		
		Electricity Savings	Natural Gas Savings	Water Savings
State Capitol	Baton Rouge	C	A	Not Applicable
Capitol Annex	Baton Rouge	C	C	Not Applicable
Pentagon Barracks	Baton Rouge	C	A	Not Applicable
OSB Service Center	Baton Rouge	C	A	Not Applicable
Information Services Building	Baton Rouge	C	A	Not Applicable
Livingston Building	Baton Rouge	C	Not Applicable	Not Applicable
Poydras Building	Baton Rouge	C	Not Applicable	Not Applicable
First Circuit Court of Appeal	Baton Rouge	C	A	A
Claiborne Building	Baton Rouge	C	Not Applicable	Not Applicable
Welcome Center	Baton Rouge	C	Not Applicable	Not Applicable
State Museum	Baton Rouge	C	A	Not Applicable
State Library	Baton Rouge	C	A	Not Applicable
LaSalle Building	Baton Rouge	C	Not Applicable	A
Iberville Building	Baton Rouge	C	Not Applicable	Not Applicable
Bienville Building	Baton Rouge	C	Not Applicable	Not Applicable
Galvez Building	Baton Rouge	C	Not Applicable	Not Applicable

Building	Building Location	IPMVP Option		
		Electricity Savings	Natural Gas Savings	Water Savings
Governor's Mansion	Baton Rouge	A	A	Not Applicable
OPH Lab	Baton Rouge	A	A	Not Applicable
Claiborne Garage	Baton Rouge	C	Not Applicable	Not Applicable
LaSalle Garage	Baton Rouge	C	Not Applicable	Not Applicable
Galvez Garage	Baton Rouge	C	Not Applicable	Not Applicable
Welcome Center Garage	Baton Rouge	C	Not Applicable	Not Applicable
Central Plant-South	Baton Rouge	C	Not Applicable	Not Applicable
Central Plant-North	Baton Rouge	C	Not Applicable	Not Applicable
State Supreme Court	New Orleans	A	A	Not Applicable
Sen. Chris Ullo Building	Harvey	A	Not Applicable	Not Applicable
Brandywine State Office Buildings	Lafayette	C	Not Applicable	A
Alexandria State Office Building	Alexandria	C	A	Not Applicable
Shreveport State Office Building	Shreveport	C	C	Not Applicable
Second Circuit Court of Appeal	Shreveport	C	C	A
NELSOB	Monroe	A	A	Not Applicable
Shaw Center Building and Plant	Baton Rouge	C	C	A

Figure 1 - IPMVP Option

- c. The Phase I Measurement and Verification Plan shall convert measured utility consumption savings to measured cost savings using utility unit costs established by the Phase I Measurement and Verification Plan for the applicable Service Year.
- d. The Phase I Measurement and Verification Plan shall establish individual meter specific Baseline Utility Unit Costs for each utility meter serving the Covered Facilities, Shaw Center Building, and Shaw Center Plant.
- e. The individual meter specific Baseline Utility Unit Costs shall be equal to the greater of: (i) the average utility unit cost for the applicable utility meter established by BREP during its audit of the Covered Facilities, Shaw Center Building, and Shaw Center Plant completed prior to the Effective Date; or (ii) the average utility unit cost for the applicable utility meter during the 12 most recent utility months prior to Effective Date.
- f. The individual meter Baseline Utility Unit Costs for each Service Year shall be equal to the Baseline Utility Unit Costs escalated by the appropriate number of years at the annual escalation rates indicated in **Figure 2** below:

Utility	Annual Escalation Rate (%)
Electricity	3.12
Natural Gas	5.17
Water and Sewer	2.20

Figure 2 - Utility Average Unit Cost Annual Escalation Rates

- g. The Phase 1 Measurement and Verification Plan shall establish individual meter specific baseline utility consumption for each meter for which Figure 1 requires the use of the IPMVP Option C: Whole Meter measurement and verification method. The individual meter specific baseline consumption shall be derived from the applicable utility meter billing data established by BREP during its audit of the Covered Facilities, Shaw Center Building, and Shaw Center Plant completed prior to the Effective Date.
 - h. In compliance with industry standards, the Phase I Measurement and Verification Plan shall contain customary provisions with regard to Baseline Adjustments.
 - i. BREP shall submit the Phase I Measurement and Verification Plan to the State for review and approval not later than one hundred twenty (120) calendar days after the Effective Date of the Phase I Ancillary Agreements.
 - j. The State shall review the Phase I Measurement and Verification Plan developed by BREP and either submit written approval of the Phase I Measurement and Verification Plan or a list of issues to BREP within thirty (30) calendar days after receiving the Phase I Measurement and Verification Plan from BREP.
 - k. Should the State fail to provide written approval or a list of issues to BREP within thirty (30) calendar days after receiving the Phase I Measurement and Verification Plan from BREP, the Phase I Measurement and Verification Plan shall be deemed approved by the State.
 - l. In the event the State submits a written list of issues to BREP within thirty (30) calendar days after receiving the Phase I Measurement and Verification Plan, BREP and the State shall collaboratively develop a Phase I Measurement and Verification Plan acceptable to both parties. In this event, the plan approved by both parties shall be the Phase I Measurement and Verification Plan.
6. The Annual Operation and Maintenance Savings are equal to the sum of the Annual FOSA Operation and Maintenance Savings and Annual Shaw Operation and Maintenance Savings amounts indicated for the applicable Service Year in **Figure 3** below:

Service Year	FOSA Operation and Maintenance Savings (\$)	Shaw Operation and Maintenance Savings (\$)	Annual Operation and Maintenance Savings
1	0	40,000	40,000
2	0	40,880	40,880
3	81,079	41,779	122,858
4	83,511	42,699	126,210
5	86,017	43,638	129,655

Service Year	FOSA Operation and Maintenance Savings (\$)	Shaw Operation and Maintenance Savings (\$)	Annual Operation and Maintenance Savings
6	88,597	44,598	133,195
7	91,255	45,579	136,834
8	93,993	46,582	140,575
9	96,813	47,607	144,419
10	99,717	48,654	148,371
11	102,708	49,724	152,433
12	105,790	50,818	156,608
13	0	51,936	51,936
14	0	53,079	53,079
15	0	54,247	54,247
16	0	55,440	55,440
17	0	56,660	56,660
18	0	57,906	57,906
19	0	59,180	59,180
20	0	60,482	60,482
Total	929,480	991,488	1,920,967

Figure 3 - Operation and Maintenance Savings

7. The Annual Infrastructure Savings are equal to the FOSA Infrastructure Savings and Shaw Infrastructure Savings indicated for the applicable Service Year in **Figure 4** below:

Service Year	FOSA Infrastructure Savings (\$)	Shaw Infrastructure Savings (\$)	Annual Infrastructure Savings (\$)
1	549,047	114,175	663,223
2	564,256	117,338	681,594
3	547,454	120,588	668,042
4	562,544	123,928	686,473
5	578,050	127,361	705,411
6	593,983	130,889	724,872
7	610,355	134,515	744,869
8	627,177	138,241	765,418
9	644,464	142,070	786,534
10	662,226	146,005	808,232
11	680,478	150,050	830,528
12	699,233	154,206	853,439
13	762,090	158,478	920,567
14	783,200	162,868	946,067
15	804,894	167,379	972,273

Service Year	FOSA Infrastructure Savings (\$)	Shaw Infrastructure Savings (\$)	Annual Infrastructure Savings (\$)
16	827,190	172,015	999,205
17	850,103	176,780	1,026,883
18	873,651	181,677	1,055,328
19	897,851	186,709	1,084,560
20	922,722	191,881	1,114,603
Total	14,040,968	2,997,154	17,038,123

Figure 4 - Infrastructure Savings

8. The Annual Costs are equal to the sum of the Annual Thermal Service Charges for the applicable Service Year plus the sum of the Annual FOSA Charges for the applicable Service Year, as further set forth in **Exhibit “L”**.
9. BREP shall calculate the Annual Savings within sixty (60) days of receipt of all necessary invoices and other required information to calculate the Annual Savings from the State, and thereafter provide an annual report concerning the Net Public Benefit Assurance.
10. In the event the Annual Savings are greater than the Annual Costs, then BREP shall have met the Net Public Benefit Assurance. In the event the Annual Savings are less than the Annual Costs, then BREP shall pay the State the shortfall amount within sixty (60) days of completing the final reconciliation report.

EXHIBIT “L”

PHASE I PAYMENT TERMS

The Phase I Payment Terms are equal to the sum of Thermal Services Charge, as set forth in **Exhibit “D”** of the Thermal Services Agreement, and the Facility Optimization Services Charge, as set forth in **Schedule 3** of the Facility Optimization Services Agreement. The Phase I Payment for each Billing Month in a given Service Year are equal to the values indicated in **Figure 1** below:

Year	Thermal Services Charge (\$ Annual)	Facility Optimization Services Charge (\$ Annual)	Phase I Payment (\$ Annual)	Phase I Payment (\$ Month)
1	75,377	390,000	465,377	38,781
2	113,355	1,703,500	1,816,855	151,405
3	110,706	2,277,650	2,388,356	199,030
4	113,701	2,340,741	2,454,442	204,537
5	116,778	2,405,579	2,522,358	210,196
6	119,939	2,472,214	2,592,153	216,013
7	123,187	2,540,694	2,663,881	221,990
8	126,523	2,611,072	2,737,594	228,133
9	129,949	2,683,398	2,813,348	234,446
10	133,470	2,757,728	2,891,198	240,933
11	137,086	2,834,117	2,971,203	247,600
12	140,801	2,912,622	3,053,423	254,452
13	144,617	2,993,302	3,137,919	261,493
14	148,538	3,076,217	3,224,754	268,730
15	152,565	3,161,428	3,313,993	276,166
16	156,702	3,248,999	3,405,701	283,808
17	160,952	3,338,997	3,499,949	291,662
18	165,318	3,431,487	3,596,805	299,734
19	169,803	3,526,539	3,696,342	308,028
20	174,410	3,624,224	3,798,634	316,553
Total	2,713,776	54,330,509	57,044,285	N/A

Figure 1 – Phase I Payment Terms

EXHIBIT “M”

PHASE I TERMINATION

The following tables set forth the fees that will be payable by the State to BREP in the event of termination of all of the Phase I Ancillary Agreements. Initially capitalized terms used in this Exhibit and not defined in Section 10.2c or **Exhibit “A”** to the CEA shall have the meanings ascribed at the end of this Exhibit.

Schedule	Description
1	Estimated Called Principal
2	Make-Whole Amount
3	Termination by State for Net Public Benefit Payment Default
4	Termination by State for Phase I Non-Appropriation

Schedule 1 – Estimated Called Principal

Service Year	Estimated Principal Balance (\$)	Estimated Capitalized Interest Subaccount Balance (\$)	Estimated Debt Service Reserve Account Balance (\$)	Estimated Called Principal (\$)
1	27,541,635	(1,595,755)	(264,403)	25,681,477
2	27,541,635	(110,043)	(264,403)	27,167,189
3	27,541,635	0	(264,403)	27,277,232
4	27,076,108	0	(264,403)	26,811,705
5	26,527,743	0	(264,403)	26,263,340
6	25,890,326	0	(264,403)	25,625,922
7	25,157,252	0	(264,403)	24,892,849
8	24,321,506	0	(264,403)	24,057,103
9	23,375,633	0	(264,403)	23,111,230
10	22,311,714	0	(264,403)	22,047,311
11	21,121,342	0	(264,403)	20,856,939
12	19,795,591	0	(264,403)	19,531,188
13	18,324,984	0	(264,403)	18,060,581
14	16,699,465	0	(264,403)	16,435,062
15	14,908,363	0	(264,403)	14,643,960
16	12,940,355	0	(264,403)	12,675,952
17	10,783,432	0	(264,403)	10,519,029
18	8,424,855	0	(264,403)	8,160,452
19	5,851,117	0	(264,403)	5,586,714
20	3,047,893	0	(264,403)	2,783,490

Schedule 2 – Make Whole Amount¹

Service Year	Estimated Called Principal (\$)	Interest Earned on Principal Balance (\$)	Estimated Average Debt Life Remaining at Termination (Years)	Estimated Treasury Yield Curve Rate for Average Debt Life Remaining at Termination (%)	Interest Earned on Principal Balance at Treasury Rate plus 50 BPS (\$)	Difference in Interest Earned on Principal Balance (\$)	Estimated Make Whole Amount (\$)
1	25,681,477	1,424,083	14.13	2.687	818,403	605,680	7,371,212
2	27,167,189	1,506,469	14.13	2.687	865,749	640,720	7,000,433
3	27,277,232	1,512,571	13.13	2.666	863,528	649,043	6,592,153
4	26,811,705	1,486,756	12.13	2.645	843,160	643,597	6,160,084
5	26,263,340	1,456,348	11.32	2.628	821,455	634,893	5,716,081
6	25,625,922	1,421,003	10.54	2.611	797,285	623,718	5,264,931
7	24,892,849	1,380,352	9.77	2.592	769,772	610,581	4,809,882
8	24,057,103	1,334,009	9.03	2.568	737,958	596,051	4,353,437
9	23,111,230	1,281,558	8.30	2.543	703,364	578,195	3,895,300
10	22,047,311	1,222,562	7.60	2.520	665,807	556,756	3,439,127
11	20,856,939	1,156,554	6.91	2.496	624,878	531,676	2,989,052
12	19,531,188	1,083,039	6.24	2.466	579,298	503,741	2,549,690
13	18,060,581	1,001,491	5.60	2.437	530,407	471,084	2,123,598
14	16,435,062	911,353	4.96	2.409	478,174	433,180	1,716,255
15	14,643,960	812,033	4.35	2.400	424,713	387,320	1,333,328
16	12,675,952	702,904	3.75	2.391	366,500	336,404	984,878
17	10,519,029	583,299	3.17	2.383	303,220	280,079	677,063
18	8,160,452	452,511	2.61	2.392	235,984	216,527	416,439
19	5,586,714	309,793	2.06	2.408	162,479	147,314	211,910
20	2,783,490	154,349	1.52	2.429	81,533	72,816	70,744

¹ The calculation of the estimated Make Whole Amount is based on hypothetical Treasury Rates and is provided for illustrative purposes only. The actual Make Whole Amount will be calculated at the time of termination.

Schedule 3 – Termination by State for Net Public Benefit Payment Default

Service Year	Estimated Notes Pay-Off Amount (\$)	Estimated BREP Reimbursement to State of the Make-Whole Amount (\$)	Estimated BREP Reimbursement to State of the Unearned Facility Optimization Services Amount (\$)	Estimated BREP Reimbursement to State of the Unearned Shaw Center Improvements Amount (\$)	Total Estimated Termination Cost (\$)
1	N/A	N/A	N/A	N/A	N/A
2	34,167,622	(7,000,433)	(5,300,000)	(241,808)	21,625,380
3	33,869,384	(6,592,153)	0	0	27,277,232
4	32,971,789	(6,160,084)	0	0	26,811,705
5	31,979,421	(5,716,081)	0	0	26,263,340
6	30,890,854	(5,264,931)	0	0	25,625,922
7	29,702,731	(4,809,882)	0	0	24,892,849
8	28,410,540	(4,353,437)	0	0	24,057,103
9	27,006,529	(3,895,300)	0	0	23,111,230
10	25,486,438	(3,439,127)	0	0	22,047,311
11	23,845,991	(2,989,052)	0	0	20,856,939
12	22,080,878	(2,549,690)	0	0	19,531,188
13	20,184,179	(2,123,598)	0	0	18,060,581
14	18,151,317	(1,716,255)	0	0	16,435,062
15	15,977,288	(1,333,328)	0	0	14,643,960
16	13,660,830	(984,878)	0	0	12,675,952
17	11,196,092	(677,063)	0	0	10,519,029
18	8,576,892	(416,439)	0	0	8,160,452
19	5,798,623	(211,910)	0	0	5,586,714
20	2,854,234	(70,744)	0	0	2,783,490

Schedule 4 – Termination by State for Phase I Non-Appropriation

Service Year	Estimated Called Principal (\$)²	Estimated BREP Reimbursement to State of the Unearned Facility Optimization Services Amount (\$)	Estimated BREP Reimbursement to State of the Unearned Shaw Center Improvements Amount (\$)	Encumbered Operating Expenses (\$)	Estimated Additional Taxes (\$)	Stranded Off-Taker Extension Investment (\$)	TSA Termination Cost (\$)	FOSA Termination Cost (\$)	Total Estimated Termination Cost (\$)
1	25,681,477	(21,464,141)	(604,521)	349,483	520,374	0	2,000,000	4,020,000	10,502,672
2	27,167,189	(5,300,000)	(241,808)	357,172	2,585,876	3,370,710	2,000,000	3,900,000	33,839,137
3	27,277,232	0	0	365,029	3,663,358	5,171,692	1,970,000	3,800,000	42,247,311
4	26,811,705	0	0	373,060	3,733,116	5,567,819	1,650,000	3,600,000	41,735,700
5	26,263,340	0	0	381,267	3,824,282	5,923,743	1,400,000	3,500,000	41,292,632
6	25,625,922	0	0	389,655	3,606,275	5,553,509	1,350,000	3,400,000	39,925,363
7	24,892,849	0	0	398,228	3,374,219	5,183,275	1,250,000	3,350,000	38,448,571
8	24,057,103	0	0	406,989	3,128,113	4,813,042	1,100,000	3,300,000	36,805,246
9	23,111,230	0	0	415,942	2,896,164	4,442,808	1,000,000	3,250,000	35,116,144
10	22,047,311	0	0	425,093	2,680,065	4,072,574	965,000	3,150,000	33,340,043
11	20,856,939	0	0	434,445	2,456,126	3,702,340	900,000	2,900,000	31,249,850
12	19,531,188	0	0	444,003	2,231,681	3,332,106	830,000	2,600,000	28,968,977
13	18,060,581	0	0	453,771	2,007,577	2,961,872	760,000	2,450,000	26,693,800
14	16,435,062	0	0	463,754	1,784,097	2,591,638	690,000	2,215,000	24,179,551
15	14,643,960	0	0	473,957	1,559,552	2,221,404	615,000	1,900,000	21,413,872
16	12,675,952	0	0	484,384	1,332,249	1,851,170	530,000	1,750,000	18,623,755
17	10,519,029	0	0	495,040	1,106,703	1,480,936	450,000	1,515,000	15,566,708
18	8,160,452	0	0	505,931	882,916	1,110,702	375,000	1,250,000	12,285,001
19	5,586,714	0	0	517,061	656,376	740,468	290,000	1,050,000	8,840,619
20	2,783,490	0	0	528,437	420,251	370,234	200,000	1,030,000	5,332,412

² There is no Make Whole Amount payable in the event of a Non-Appropriation Event.

Any amounts owed by BREP to the State set forth in this **Exhibit “M”** (either directly or as reimbursement) shall be due and payable within five (5) Business Days after the State has paid all amounts owed by the State to BREP’s Financier or BREP, as applicable.

DEFINITIONS:

- a. “Additional Taxes” represents the additional taxes to be incurred by BREP as a result of a termination prior to the Expiry Date. The Additional Taxes is estimated to equal the amounts indicated on Schedule 4.
- b. “Capitalized Interest Subaccount” has the meaning assigned to such term in the BREP Note Purchase Agreement (and will include any similar account established under a subsequent BREP Note Purchase Agreement, if applicable). The Capitalized Interest Subaccount is estimated to equal the amounts indicated on Schedule 1.
- c. “Debt Service Reserve Account” has the meaning assigned to such term in the BREP Note Purchase Agreement (and will include any similar account established under a subsequent BREP Note Purchase Agreement, if applicable). The Debt Service Reserve Account is estimated to equal the amounts indicated on Schedule 1.
- d. “Encumbered Operating Expenses” represents the encumbered expenses for which BREP will be liable incurred in furtherance of the Project. The Encumbered Operating Expenses is equal to the actual amount not to exceed the amount indicated on Schedule 4.
- e. “FOSA Termination Cost” means the BREP opportunity cost (loss of potential gain from investing its development efforts and equity in the Facility Optimization Services Agreement, instead of other opportunities) caused by the termination of the Facility Optimization Services Agreement prior to the Expiry Date. The FOSA Termination Cost is equal to the amount indicated in Schedule 5 of the Facility Optimization Services Agreement – **Schedule 4**.
- f. “Make Whole Amount” means, with respect to any BREP Note, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal over the amount of such Called Principal; provided, that the Make Whole Amount may in no event be less than zero dollars (\$0). Below are the defined components of the Make Whole Amount.
 - i. “BREP Note Purchase Agreement” means the Note Purchase Agreement entered into between BREP, BREP Parent and BREP’s Financier contemporaneously with this Agreement. In the event of a refinancing by BREP and BREP Parent, the term “BREP Note Purchase Agreement” will refer to any note purchase, loan or similar agreement entered into pursuant to that refinancing.
 - ii. “BREP Notes” means the senior secured notes of BREP issued and sold to BREP’s Financier pursuant to the provisions of the BREP Note Purchase Agreement. In the event

of a refinancing, the term “BREP Notes” will mean the notes or other evidence of indebtedness issued pursuant to the replacement of the BREP Note Purchase Agreement.

- iii. “Called Principal” means, with respect to any BREP Note, the principal of such BREP Note that is to be prepaid or has become or is declared to be immediately due and payable pursuant to the provisions of the BREP Note Purchase Agreement.
- iv. “Discounted Value” means, with respect to the Called Principal of any BREP Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the BREP Notes is payable) equal to the Reinvestment Yield with respect to such Called Principal.
- v. “Reinvestment Yield” means, with respect to the Called Principal of any BREP Note, the sum of (a) 0.50% plus (b) the yield to maturity implied by the “Ask Yield” reported as of 10:00 a.m. (New York City time) on the second Business Day (as defined in the BREP Note Purchase Agreement” preceding the Settlement Date with respect to such Called Principal, on the display designed as “Page PX1” (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury securities (“Reported”) having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there are no such U.S. Treasury securities Reported having a maturity equal to such Remaining Average Life, then such implied yield to maturity will be determined by (i) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (ii) interpolating linearly between the “Ask Yields” Reported for the applicable most recently issued and actively traded on-the-run U.S. Treasury securities with maturities (1) closest to and greater than such Remaining Average Life and (2) closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable BREP Note.
- vi. If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then “Reinvestment Yield” means, with respect to the Called Principal of any BREP Note, the sum of (x) 0.50% plus (y) the yield to maturity implied by the U.S. Treasury constant maturity yields reported, for the latest day for which such yields have been so reported as of the second Business Day (as defined in the BREP Note Purchase Agreement) preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for the U.S. Treasury constant maturity having a term equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there is no such U.S. Treasury constant maturity having a term equal to such Remaining Average Life, such implied yield to maturity will be determined by interpolating linearly between (1) the U.S. Treasury constant maturity so reported with the term closest to and greater than such Remaining Average Life and (2) the U.S. Treasury constant maturity so reported with the

term closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal spaces as appears in the interest rate of the applicable BREP Note.

- vii. “Remaining Average Life” means, with respect to any Called Principal, the number of years obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years, computed on the basis of a three hundred sixty (360)-day year comprised of twelve (12) thirty (30)-day months and calculated to two (2) decimal places, that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.
- viii. “Remaining Scheduled Payments” means, with respect to the Called Principal of any BREP Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, provided that is such Settlement Date is not a date on which interest payments are due to be made under the BREP Notes, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to the provisions of the BREP Note Purchase Agreement.
- ix. “Settlement Date” means, with respect to the Called Principal of any BREP Note, the date on which such Called Principal is to be prepaid or has become or is declared to be immediately due and payable pursuant to the provisions of the BREP Note Purchase Agreement.
- g. “Notes Pay-Off Amount” means the Called Principal, interest (including any default interest), Make-Whole Amount and any fees, costs and other liabilities of BREP due and owing to BREP’s Financier pursuant to the terms of BREP Note Purchase Agreement.
- h. “Stranded Off-Taker Extension Investment” is equal to the actual book basis of BREP’s stranded investment in Off-taker Improvements not to exceed \$5,923,743.
- i. “Stranded Shaw Center Improvements Investment” is equal to the actual book basis of BREP’s stranded investment in Shaw Center Improvements not to exceed \$604,521.
- j. “TSA Termination Cost” means the BREP opportunity cost (loss of potential gain from investing its development efforts and equity in the Thermal Services Agreement, instead of other opportunities) caused by the termination of the Thermal Services Agreement prior to Expiry Date. The TSA Termination Cost equals the amount indicated in Schedule 6 of the Thermal Services Agreement – **Exhibit “G”**.

- k. “Unearned Facility Optimization Services Amount” is equal to the cost of completing the remainder of the Facility Optimization Services, i.e. the portion of the Facility Optimization Services that is incomplete as of the Termination Date.

- l. “Unearned Shaw Center Improvements Amount” is equal to the cost of completing the remainder of the Shaw Center Improvements, i.e. the portion of the Shaw Center Improvements that is incomplete as of the Termination Date.