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**ESCROW AGREEMENT**

**between**

**CITY OF TOLEDO, OHIO**

**and**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**

**Dated as of**

**[November 1], 2019**

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Relating to the Refunding of Outstanding

City of Toledo, Ohio

Capital Improvement and Refunding Bonds, Series 2009

Dated as of October 15, 2009, and Stated to Mature on December 1 in 2024 and 2029

Street Improvement Bonds, Series 2009

(Federally Taxable – Recovery Zone Economic Development Bonds – Direct Payment)

Dated as of October 15, 2009, and Stated to Mature on December 1, 2025

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**ESCROW AGREEMENT**

**between**

**CITY OF TOLEDO, OHIO**

**and**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**

**THIS ESCROW AGREEMENT** (Agreement) is made and entered into as of [November 1], 2019, by and between the City of Toledo, Ohio (the City), a municipal corporation and political subdivision duly organized and validly existing under its Charter and the Constitution and laws of the State of Ohio, and The Bank of New York Mellon Trust Company, N.A., a national banking association duly organized and validly existing under the laws of the United States of America and authorized to exercise corporate trust powers under the laws of the State of Ohio, in its capacity as Escrow Trustee under this Agreement;

**WITNESSETH:**

WHEREAS, pursuant to Ordinances No. 414-09, 416-09 and 418-09, passed by the Council of the City (the City Council) on August 4, 2009, and the related certificate of award dated October 8, 2009, signed by the Director of Finance pursuant thereto (collectively, the Original 2009A Bond Legislation), the City issued its \$12,340,000 Capital Improvement and Refunding Bonds, Series 2009, dated as of October 15, 2009 (the Original 2009A Bonds), to provide funds to pay costs of (i) improving the Martin Luther King Bridge in the City by rehabilitating, reconstructing and replacing the bascule lift spans and the bascule piers, installing new mechanical and electrical control systems, and relocating and reconstructing the operator towers, in each case together with the necessary appurtenances and work incidental thereto (Project 2009A1), (ii) improving Blackstone Drive from Homer Avenue to Manhattan Boulevard by grading, draining, curbing and paving (Project 2009A2), and (iii) refunding at a lower interest cost the \$2,150,000 of the City's outstanding Street Improvement Bonds, Series 1999, that are stated to mature on or after December 1, 2010, and were issued as a part of a consolidated issue of Various Purpose Improvement Bonds, Series 1999, dated as of July 15, 1999, to provide funds to pay costs of improving certain designated streets in the City's street system by constructing, reconstructing and rehabilitating the pavement base, bridges, curbs, drainage improvements, driveway approaches, pedestrian ramps and sidewalks, widening, adjusting radius cutbacks, manholes and catch basins, preparing the surface and surfacing and resurfacing, where necessary, in each case together with the necessary appurtenances and work incidental thereto, and acquiring real estate and interests in real estate in connection therewith (Project 2009A3); and

WHEREAS, pursuant to Ordinance No. 417-09, passed by the City Council on August 4, 2009, and the related certificate of award dated October 8, 2009, signed by the Director of Finance pursuant thereto (collectively, the Original 2009B Bond Legislation), the City issued its Street Improvement Bonds, Series 2009 (Federally Taxable – Recovery Zone

Economic Development Bonds – Direct Payment), dated as of October 15, 2009 (the Original 2009B Bonds), to provide funds to pay costs of (improving certain designated streets in the City’s street system, in cooperation with the Department of Transportation of the State of Ohio and otherwise, by constructing, reconstructing and rehabilitating the pavement base, bridges, curbs, drainage improvements, driveway approaches, pedestrian ramps and sidewalks, widening, adjusting radius cutbacks, manholes and catch basins, preparing the surface and surfacing and resurfacing, where necessary, in each case together with the necessary appurtenances and work incidental thereto, and acquiring real estate and interests in real estate in connection therewith (the Series 2009B Project); and

WHEREAS, the Council has determined that it is necessary and in the best interest of the City to refund for debt service cost savings (i) all \$5,000,000 of the Original 2009A Bonds that are now outstanding and stated to mature on December 1 in the years 2024 and 2029 (collectively, the Refunded 2009A Bonds), all of which outstanding Original 2009A Bonds were issued for Project 2009A1 (as defined under Original 2009A Bonds) and (ii) \$4,080,000 of the Original 2009B Bonds that are now outstanding and stated to mature on December 1, 2025 (the Refunded 2009B Bonds and, together with the Refunded 2009A Bonds, collectively, the Refunded Bonds); and

WHEREAS, pursuant to Ordinances No. \_\_\_-19 and No. \_\_\_-19, each passed by the City Council on [September 3], 2019, and the related certificate of award signed by the Director of Finance pursuant thereto (collectively, the Refunding Bond Legislation), the City has issued and delivered its (i) \$[5,000,000] Bridge Improvement Refunding Bonds, Series 2019, and (ii) its \$[4,080,000] Street Improvement Refunding Bonds, Series 2019 (collectively, the Refunding Bonds), as parts of its consolidated issue of \$[12,580,000] Capital Improvement and Refunding Bonds, Series 2019, dated as of [November \_\_], 2019 (the 2019 Consolidated Issue Bonds), to provide funds to refund the Refunded Bonds and to pay costs of issuance of the Refunding Bonds and of refunding the Refunded Bonds; and

WHEREAS, the intent and purpose of this Agreement, entered into pursuant to Chapter 133 of the Revised Code, including particularly but without limitation Section 133.34 of the Revised Code, is to provide for the deposit, investment and application of proceeds of the Refunding Bonds in such manner as to provide for the payment of the Accruing Debt Charges on the Refunded Bonds and thereby to cause the Refunded Bonds to be deemed to be paid and discharged, and thereby no longer to be considered outstanding, for the purposes of Chapter 133 of the Revised Code.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement, and for the purposes stated in the preambles, the City and the Escrow Trustee covenant, agree and bind themselves as follows:

**Section 1. Definitions.** In addition to the terms defined above, the following terms as used in this Agreement shall have the following meanings:

“Accruing Debt Charges” means Debt Charges payable on the Refunded Bonds after the date of this Agreement as they come due, as applicable, on their stated payment dates and on the applicable Optional Redemption Date, all as shown on attached Exhibit A.

“Bond Retirement Fund” means the Bond Retirement Fund of the City established pursuant to Section 5705.09 of the Revised Code.

“Code” means the Internal Revenue Code of 1986, the Treasury Regulations (whether proposed, temporary or final) under that Code or the statutory predecessor of that Code, any amendments of, or successor provisions to, the foregoing, and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code includes any applicable successor section or provision and such applicable Treasury Regulations, rulings, announcements, notices, procedures and determinations pertinent to that section of the Code.

“Debt Charges” means the principal of and interest and any applicable redemption premium required to be paid on the Refunded Bonds.

“Escrow Fund” means the 2019 City of Toledo Refunded GO Bonds Escrow Fund established pursuant to Section 2 of this Agreement and Section 9 of the Refunding Bond Legislation, and the Escrow Fund Deposits in it.

“Escrow Fund Deposits” means money and Escrow Securities, and investment earnings on and income derived from those Escrow Securities, in the Escrow Fund.

“Escrow Securities” means those Escrow Securities referred to in Section 4, and also includes Substitute Escrow Securities.

“Fiscal Officer” means the City’s Director of Finance.

“Government Obligations” means non-callable direct obligations of or obligations guaranteed as to payment by, the United States of America, as referred to in Section 133.34 (D) of the Revised Code, that mature or are subject to redemption by and at the option of the holder not later than the date or dates when the moneys, together with interest or other investment income accrued on those moneys, will be required for purposes of this Agreement.

“Optional Redemption Date” means [December \_\_, 2019].

“Original Bond Legislation” means, collectively, the Original 2009A Bond Legislation and the Original 2009B Bond Legislation.

“Original Bonds” means, collectively, the Original 2009A Bonds and the Original 2009B Bonds.

“Original 2009A Bond Legislation” means Ordinances No. 414-09, 416-09 and 418-09, passed by the Council of the City (the City Council) on August 4, 2009, and the related certificate of award dated October 8, 2009, signed by the Director of Finance pursuant thereto.

“Original 2009B Bond Legislation” means Ordinance No. 417-09, passed by the City Council on August 4, 2008, and the related certificate of award dated October 8, 2008, signed by the Director of Finance pursuant thereto.

“Original 2009A Bonds” means the City’s \$12,340,000 Capital Improvement and Refunding Bonds, Series 2009, dated as of October 15, 2009, issued to provide funds to pay costs of (i) improving the Martin Luther King Bridge in the City by rehabilitating, reconstructing and replacing the bascule lift spans and the bascule piers, installing new mechanical and electrical control systems, and relocating and reconstructing the operator towers, in each case together with the necessary appurtenances and work incidental thereto (Project 2009A1), (ii) improving Blackstone Drive from Homer Avenue to Manhattan Boulevard by grading, draining, curbing and paving (Project 2009A2), and (iii) refunding at a lower interest cost the \$2,150,000 of the City’s outstanding Street Improvement Bonds, Series 1999, that are stated to mature on or after December 1, 2010, and were issued as a part of a consolidated issue of Various Purpose Improvement Bonds, Series 1999, dated as of July 15, 1999, to provide funds to pay costs of improving certain designated streets in the City’s street system by constructing, reconstructing and rehabilitating the pavement base, bridges, curbs, drainage improvements, driveway approaches, pedestrian ramps and sidewalks, widening, adjusting radius cutbacks, manholes and catch basins, preparing the surface and surfacing and resurfacing, where necessary, in each case together with the necessary appurtenances and work incidental thereto, and acquiring real estate and interests in real estate in connection therewith (Project 2009A3), \$5,515,000 of which Original 2009A Bonds were outstanding immediately prior to the issuance of the Refunding Bonds.

“Original 2009B Bonds” means the City’s \$8,000,000 Street Improvement Bonds, Series 2009 (Federally Taxable – Recovery Zone Economic Development Bonds – Direct Payment), dated as of October 15, 2009, issued to provide funds to pay costs of (improving certain designated streets in the City’s street system, in cooperation with the Department of Transportation of the State of Ohio and otherwise, by constructing, reconstructing and rehabilitating the pavement base, bridges, curbs, drainage improvements, driveway approaches, pedestrian ramps and sidewalks, widening, adjusting radius cutbacks, manholes and catch basins, preparing the surface and surfacing and resurfacing, where necessary, in each case together with the necessary appurtenances and work incidental thereto, and acquiring real estate and interests in real estate in connection therewith (the Series 2009B Project), \$4,625,000 of which Original 2009B Bonds were outstanding immediately prior to the issuance of the Refunding Bonds.

“Paying Agent” means The Bank of New York Mellon Trust Company, N.A., as the designated bond registrar and paying agent for the all of the Original Bonds, and its designated successors from time to time.

“Refunded Bonds” means, collectively, (i) all \$5,000,000 of the Original 2009A Bonds that are now outstanding and stated to mature on December 1 in the years 2024 through 2029 (collectively, the Refunded 2009A Bonds), all of which Refunded 2009A Bonds represent bonds issued for Project 2009A1 (as defined under Original 2009A Bonds and (ii) \$4,080,000 of the Original 2009B Bonds that are now outstanding and stated to mature on December 1, 2025 (the Refunded 2009B Bonds), being a portion of the \$4,625,000 of the outstanding Original 2009B Bonds stated to mature on that date.

“Refunding Bond Legislation” means, collectively, Ordinances No. \_\_-19 and No. \_\_-19, each passed by the City Council on [September 3], 2019, and the related certificate of award signed by the Director of Finance pursuant thereto, authorizing the issuance and sale of the Refunding Bonds.

“Refunding Bonds” means, collectively, the City’s (i) [\$5,000,000] Bridge Improvement Refunding Bonds, Series 2019 and (ii) [\$4,080,000] Street Improvement Refunding Bonds, Series 2019, issued as parts of its consolidated issue of \$[12,580,000] Capital Improvement and Refunding Bonds, Series 2019, dated as of [November \_\_], 2019.

“State” means the State of Ohio.

“Substitute Escrow Securities” means those Substitute Escrow Securities referred to in Section 5.

“Verification Report” means a report of an independent public accounting firm of national reputation verifying and determining initially (being the report referred to in Section 7), or at a subsequent time as provided for in this Agreement, that, among other matters, the Escrow Securities in or to be in the Escrow Fund are of such maturity (including redemption by and at the option of the holder) dates and interest or other investment income payment dates and bear such interest as will be sufficient, together with any other available money in that Fund, without further investment or reinvestment of either the principal amount of or the investment earnings from those Escrow Securities, for the payment of Accruing Debt Charges on the scheduled dates as shown on Exhibit A.

Any reference to:

(i) The City, or to its officers, or to other public officers, boards, commissions, departments, institutions, agencies, bodies or entities, shall include those succeeding to their functions, duties or responsibilities by operation of law, and also those at the time legally acting in their place.

(ii) A section or provision of the Revised Code, or to the laws of Ohio, shall include that section or provision and those laws as from time to time amended, modified, revised or superseded.

(iii) A Section or Exhibit, unless otherwise stated, is to that Section of or Exhibit to this Agreement.

**Section 2. Escrow Fund.** In accordance with and for the purposes of the Refunding Bond Legislation and this Agreement, there is hereby established with the Escrow Trustee and ordered maintained in a separate deposit account (except when invested as hereinafter provided) a trust fund to be designated the “2019 City of Toledo Refunded GO Bonds Escrow Fund”. The Escrow Fund shall be held in the custody of the Escrow Trustee, shall be held in trust for and pledged for the benefit, equally and ratably, of the holders of the Refunded Bonds, and shall

be used and applied, and is irrevocably committed, to pay the Accruing Debt Charges on the scheduled dates as shown on Exhibit A, all as provided in the Refunding Bond Legislation and this Agreement.

**Section 3. Application of Money to and Investment of Escrow Fund.** At the time of delivery of and payment for the Refunding Bonds, the City shall deliver, or cause to be delivered, to the Escrow Trustee (i) \$\_\_\_\_\_ of the proceeds of the Refunding Bonds [and (ii) \$\_\_\_\_\_ of additional funds available to the City], in immediately available funds. The Escrow Trustee shall deposit those amounts in the Escrow Fund. [The \$\_\_\_\_\_ of additional funds deposited in the Escrow Fund shall be held in cash, uninvested and used to pay interest on the Refunded Bonds on December 1, 2019.] Of the proceeds of the Refunding Bonds deposited in the Escrow Fund, \$\_\_\_\_\_ shall be used immediately by the Escrow Trustee to purchase the Government Obligations identified in Exhibit B, and the remaining \$\_\_\_\_\_ shall be held in cash, uninvested. Promptly following receipt by the Escrow Trustee from the City of the amounts described in the first sentence of this Section 3 and purchase by the Escrow Trustee of the Government Obligations described in Exhibit B, the Escrow Trustee shall provide to the City a certificate substantially in the form attached hereto as Exhibit C.

**Section 4. Escrow Securities.** (a) The City has heretofore found and determined that the investments in the Escrow Securities identified in Exhibit B are advantageous and, based on the Verification Report referred to in Section 7, proper in yield and payment date, in order to make available the necessary money to provide, from the proceeds of the Escrow Fund Deposits, for the payment of the Accruing Debt Charges on the scheduled dates as shown on Exhibit A and to meet the applicable requirements of Section 148 of the Code.

(b) The cash receipts derived from the Escrow Securities shall be credited to the Escrow Fund. If at any time any money in the Escrow Fund is not invested, the Escrow Trustee shall hold that money in cash or, at the written direction of the Fiscal Officer, shall invest that money in Government Obligations which shall both (i) mature on or prior to the dates on which that money, together with other Escrow Fund Deposits, will be needed, as evidenced by a Verification Report to be delivered to the Escrow Trustee, to pay Accruing Debt Charges on the scheduled dates as shown on Exhibit A for those payments, and (ii) bear interest at such rate or rates as, in the opinion of nationally recognized bond counsel, will not cause the interest on any of the Refunded Bonds or on the Refunding Bonds to be included in gross income for federal income tax purposes.

**Section 5. Substitute Escrow Securities.** (a) At the written direction of the City, the Escrow Trustee shall from time to time sell all or a portion of the Escrow Securities and purchase for deposit in the Escrow Fund other Government Obligations specified in that direction. Any such purchase of Substitute Escrow Securities shall be further evidenced by a supplemental Exhibit B to be appended to this Agreement, and signed on behalf of the City by the Fiscal Officer and by the Escrow Trustee. The Escrow Trustee shall have received, prior to the substitution of Substitute Escrow Securities for other Escrow Securities, both:

(i) An opinion of nationally recognized bond counsel to the effect that the sale, purchase and substitution will not cause the interest on any of the Refunded Bonds or on the Refunding Bonds to be included in gross income for federal income tax purposes, and

(ii) A Verification Report relating to Escrow Securities (including the Substitute Escrow Securities) and any money then in the Escrow Fund, including any cash deposited by the City in addition to the cash deposited initially in the Escrow Fund. The Escrow Trustee shall deliver a copy of that Verification Report to each rating agency that has, at the City's request, rated the Refunded Bonds.

(b) Any amount received by the Escrow Trustee upon any such sale of Escrow Securities which is in excess of the amount needed and used to purchase Substitute Escrow Securities or to be held in cash for the purposes of this Agreement in accordance with this Agreement and the Verification Report shall be paid promptly to the City. All costs relating to any such substitution or exchange of Escrow Securities, including without limitation the costs of obtaining any necessary opinions of bond counsel and Verification Report, shall be paid by the City.

**Section 6. Application of Escrow Fund.** (a) Subject to the provisions of this Agreement, the Escrow Fund shall be held by the Escrow Trustee in trust for and irrevocably committed to, and shall be used solely to, pay when due the Accruing Debt Charges.

(b) Money in the Escrow Fund shall be, and the Escrow Trustee agrees that money will be, used solely for the purposes as described in this Agreement, and the deposit of the money in the Escrow Fund shall be irrevocable. The Escrow Trustee further agrees that it will not surrender or otherwise attempt to redeem or otherwise negotiate the Escrow Securities except as they shall come due [at maturity or] upon redemption as shown on Exhibit B or when they become due following reinvestment pursuant to Section 4 or upon substitution of Escrow Securities in accordance with Section 5.

(c) Subject to the above requirements for the use of the Escrow Fund and of the Escrow Fund Deposits, and except as otherwise provided in this Agreement, the City and the Escrow Trustee covenant and agree that the Escrow Trustee shall have full and complete control and authority, and the City will not exercise any control or authority, over and with respect to the Escrow Fund and the Escrow Fund Deposits.

(d) On or before each day when Accruing Debt Charges are due and payable, the Escrow Trustee shall transmit, from money then in the Escrow Fund, to the Paying Agent amounts sufficient for the Paying Agent to make payment of the Accruing Debt Charges on the Refunded Bonds then due and payable, all of which amounts so transmitted shall be in immediately available funds..

(e) The Escrow Trustee agrees that it will, promptly following the payment (or reserving money in the Escrow Fund for the payment) when due of all Accruing Debt Charges as provided for in this Agreement, pay to the City any money then remaining in the Escrow Fund (except any money that is required to be reserved in the Escrow Fund for that payment).



**Section 7. Verification Report.** The City and the Escrow Trustee acknowledge that each has received the initial Verification Report of [Causey Demgen & Moore P.C.], an independent public accounting firm of national reputation, dated [November \_\_], 2019, and the City further acknowledges that it is satisfied that that Verification Report complies with the requirements of the Revised Code for the Refunded Bonds to be considered paid and discharged and no longer outstanding. Promptly following the receipt of that report, the Fiscal Officer shall sign and deliver to the Lucas County Auditor a certificate in substantially the form attached hereto as Exhibit F.

**Section 8. Prior Redemption and Refunding Notices.** (a) The Escrow Trustee is hereby authorized and directed, and agrees, to give or cause to be given notice of the refunding of the Refunded Bonds and the deposit of the Escrow Securities and any money in escrow for that purpose, within 5 days following its execution and delivery to the City of a certificate substantially in the form of Exhibit C, (i) to the Municipal Securities Rulemaking Board (MSRB), as the sole remaining Nationally Recognized Municipal Securities Information Repository designated by the SEC, and to the Ohio Municipal Advisory Council, the State information depository, through the MSRB's Electronic Municipal Market Access (EMMA) system, and (ii) by mail to (A) Moody's Investors Service and S&P Global Ratings, the rating services that have at the request of the City rated the Refunded Bonds, (B) the registered owner of each Refunded Bond at the registered owner's address shown on the bond register for the Refunded Bonds at the close of business on the date of the delivery of that certificate, and (C) Assured Guaranty Corp. Inc. (the bond insurer for all of the Refunded Bonds), which notices shall be substantially in the forms attached hereto as Exhibit D. The City agrees to pay all costs incurred by the Escrow Trustee in giving those notices.

(b) The City and the Escrow Trustee hereby acknowledge that, as of the date of execution and delivery of this Agreement, the City has given to the Paying Agent, the irrevocable written notice of the call for optional redemption of the Refunded 2009A Bonds, that is required to be given by the City to the Paying Agent under the Refunding Bond Legislation and the Original 2009A Bond Legislation and has provided to the Paying Agent a form of notice of redemption, substantially in the form attached hereto as Exhibit E-1. The Paying Agent has been authorized and directed, and agreed, to give the written notice on or before [November \_\_], 2019, to each registered owner of the Refunded 2009A Bonds that the Refunded 2009A Bonds have been and are to be called for prior optional redemption and redeemed on the Optional Redemption Date, in accordance with the provisions of the Refunded 2009A Bonds, the Original 2009A Bond Legislation and the Refunding Bond Legislation.

(c) The City and the Escrow Trustee hereby acknowledge that, as of the date of execution and delivery of this Agreement, the City has given to the Paying Agent, the irrevocable written notice of the call for optional redemption of the Refunded 2009B Bonds, that is required to be given by the City to the Paying Agent under the Refunding Bond Legislation and the Original 2009B Bond Legislation and has provided to the Paying Agent a form of notice of redemption, substantially in the form attached hereto as Exhibit E-2. The Paying Agent has been authorized and directed, and agreed, to give the written notice on or before [November \_\_], 2019, to each registered owner of the Refunded 2009B Bonds that the Refunded 2009B Bonds have been and are to be called for prior optional redemption and redeemed on the Optional Redemption Date, in accordance with the provisions of the Refunded 2009B Bonds, the Original 2009B Bond Legislation and the Refunding Bond Legislation.

(d) The Escrow Trustee confirms that the arrangements for giving notice of the prior redemption of Refunded Bonds, as provided in this Agreement, are satisfactory to it for purposes of this Agreement, the Original Bond Legislation and Section 133.34 of the Revised Code.

**Section 9. Pledge.** The trust and fiduciary relationship created by this Agreement is irrevocable and intended for the benefit of the owners from time to time of the then unpaid Refunded Bonds as provided in this Agreement. The money realized from the investment income on and the principal of the Escrow Securities is hereby dedicated to and pledged for the payment when due of the Accruing Debt Charges. That money is subject to the lien of that pledge, which shall be valid and binding against all parties having claims of any kind against the City or the Escrow Trustee and shall constitute a perfected security interest, and that money and the Escrow Securities are pledged and shall be used solely for the purposes stated in this Agreement. The lien of that pledge, and the security interest created pursuant to this Agreement, shall take effect on the date of this Agreement without regard to the date of actual signing and delivery of this Agreement or deposit of Escrow Fund Deposits in the Escrow Fund, and shall remain in full force and effect until the terms of this Agreement have been satisfied and the Escrow Fund Deposits have been applied as provided for in this Agreement.

**Section 10. Expenses.** The City shall pay, or cause to be paid, to the Escrow Trustee for its services under this Agreement and all of its future services a one-time fee of \$\_\_\_\_.00 payable on or before December 15, 2019, plus all out-of-pocket costs incurred by the Escrow Trustee, including those incurred in giving the notices required to be given by it under Section 8(a) of this Agreement. The Escrow Trustee acknowledges that this provision for payment is satisfactory to it, and that it does not have and will not have any lien on or other interest in the Escrow Fund or Escrow Fund Deposits for the payment of any fees, charges or expenses payable by the City under this Agreement.

The Escrow Trustee acknowledges that provision satisfactory to it has been made for paying all amounts payable to it in its capacity as Escrow Trustee in connection with the Refunded Bonds and this Agreement.

If the Escrow Trustee renders any service hereunder not provided for in this Agreement, or the Escrow Trustee is made a party to or intervenes in any litigation pertaining to this Agreement or institutes interpleader proceedings relative hereto, the Escrow Trustee shall be compensated reasonably by the City for such extraordinary services and reimbursed for all fees, costs, liability and expenses (including reasonable attorneys' fees) occasioned thereby.

**Section 11. Successor Escrow Trustee.** (a) Neither this Agreement nor the trust created under it may be assigned by the Escrow Trustee without the prior written consent of the City, unless the Escrow Trustee (i) is required by law to divest itself of its interest in its corporate trust department or operations, (ii) merges or is consolidated with another association, bank, trust company or other entity or (iii) sells or otherwise assigns all or substantially all of its corporate trust business, in either which event the trust shall be continued by the Escrow Trustee's successor in interest, so long as it is a corporate trustee authorized to exercise trust powers under the laws of the

State, without the execution or filing of any instrument or any further act on the part of the parties hereto, notwithstanding anything herein to the contrary.

(b) If the Escrow Trustee resigns or is removed from acting under this Agreement, or is dissolved or otherwise becomes incapable of acting under this Agreement (except as provided in paragraph (a) above), or is taken under the control of any public officer or of a receiver appointed by a court, the City shall select a successor Escrow Trustee. If the City does not appoint a successor by the resignation or removal date, the Escrow Trustee may petition any court of competent jurisdiction for the appointment of a successor Escrow Trustee, at the City's expense.

(c) Any successor Escrow Trustee shall sign, acknowledge and deliver to its predecessor and to the City an instrument in writing accepting that appointment, and thereupon that successor without any further act shall become fully vested with all the documents, rights, powers, trusts, duties and obligations, and immunities, interests and causes of action, of its predecessor as Escrow Trustee. The predecessor Escrow Trustee shall on the written request of its successor or of the City (i) sign and deliver an instrument transferring to the successor Escrow Trustee all the rights, powers, and trusts of the predecessor Escrow Trustee under this Agreement, and (ii) transfer to the successor Escrow Trustee all Escrow Fund Deposits. The City shall, on request, sign and deliver any instrument in writing from the City required by any successor Escrow Trustee for more fully and certainly vesting in it the rights, powers and duties vested or intended to be vested in the predecessor.

## **Section 12. Amendments.**

(a) The duties and obligations of the Escrow Trustee shall be determined solely by the express provisions of this Agreement as the same may be amended in accordance with its terms from time to time by the Escrow Trustee and the City.

(b) This Agreement may be amended or modified, by written agreement of the City and Escrow Trustee, only (i) to cure any ambiguity, inconsistency or formal defect in it or in its application, or (ii) to delete any provision of this Agreement deemed to be illegal, or (iii) to confer upon the Escrow Trustee for the benefit of the holders of the Refunded Bonds any additional rights, remedies, powers or authority, or (iv) in any respect which in the Escrow Trustee's judgment is not materially adverse to the interests of the owners of the Refunded Bonds or of the Escrow Trustee and is not prejudicial to the purposes of this Agreement, or (v) to evidence any successor to the Escrow Trustee. In the case of an amendment or modification contemplated by clauses (i) through (iv) of the preceding sentence, the Escrow Trustee shall first have received an opinion of nationally recognized bond counsel that the amendment or modification will not adversely affect the exclusion of interest on the Refunded Bonds or on the Refunding Bonds from gross income for federal income tax purposes.

**Section 13. Notices.** Notice from one of the parties to the other under this Agreement will be sufficient for the purpose if it is contained in a writing mailed by first class mail, postage prepaid, to the City at Suite 2050, One Government Center, Toledo, Ohio 43604-2293, Attention: Director of Finance, and to the Escrow Trustee at The Bank of New York Mellon Trust Company, N.A., [The Bank of New York Mellon Trust Company, N.A., 2 N. LaSalle, 7th Floor

Chicago, Illinois 60602, Attention Corporate Trust Services], or to any other address which may be designated from time to time by either party in writing delivered to the other party.

**Section 14. Reliance by Escrow Trustee.** The Escrow Trustee shall be protected, in the absence of bad faith on its part in the performance of its services under this Agreement, in acting upon any notice, request, certificate, affidavit, letter, telegram, fax, email or other paper or document believed reasonably by it to be genuine and correct and to have been signed or sent by the proper party or parties, and shall not be held to have notice of any change of authority of any person, until receipt of written notice thereof from the City. The Escrow Trustee may apply at any time to the Fiscal Officer for instructions, and may consult with counsel for the City, or in the discretion of the Escrow Trustee, with its own counsel, as to anything arising in connection with its service as Escrow Trustee under this Agreement, and the Escrow Trustee shall not be liable for any action taken or omitted to be taken in good faith in reliance upon such instructions or upon the opinions of such counsel. The Escrow Trustee may execute any of its trusts or powers and perform any of its duties under this Agreement by or through attorneys, agents or employees. None of the provisions contained in this Agreement shall require the Escrow Trustee to use or advance its own funds in the performance of any of its duties or the exercise of any of its rights or powers hereunder. The Escrow Trustee shall not be responsible or liable for the sufficiency, correctness, genuineness or validity of the Escrow Securities deposited with it; or the performance or compliance by any party other than the Escrow Trustee with the terms or conditions of any such instruments. The Escrow Trustee shall not be liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without negligence.

**Section 15. Partial Invalidity.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that holding shall not invalidate or render unenforceable any other provision of this Agreement.

**Section 16. Benefit of Agreement.** This Agreement shall inure to the benefit of and shall be binding upon the City and the Escrow Trustee, and their respective successors, and the holders of the Refunded Bonds and their respective assigns, all subject to the provisions of this Agreement.

**Section 17. Termination.** This Agreement shall terminate at such time as all money in the Escrow Fund has been paid out as provided in this Agreement.

**Section 18. Counterparts.** This Agreement may be signed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the City of Toledo has caused this Agreement to be signed in its name and on its behalf by the Mayor and the Director of Finance, and The Bank of New York Mellon Trust Company, N.A., as Escrow Trustee, in token of its acceptance of the trusts created under this Agreement, has caused this Agreement to be signed in its name by its duly authorized signer, all as of [November 1], 2019.

**CITY OF TOLEDO, OHIO**

Approved as to form:

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
Director of Law  
City of Toledo, Ohio

And By: \_\_\_\_\_  
Director of Finance

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,**  
Escrow Trustee

By: \_\_\_\_\_  
Vice President

**CERTIFICATE**

As the fiscal officer of the City of Toledo, Ohio, I certify that the moneys required to meet the obligations of the City during the year 2019 under the attached Escrow Agreement has been lawfully appropriated by the Council of the City for those purposes and is in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44 of the Revised Code.

Dated: [November 1], 2019

\_\_\_\_\_  
Director of Finance  
City of Toledo, Ohio

## EXHIBIT A

### ACCRUING DEBT CHARGES ON REFUNDED BONDS

The following are the Accruing Debt Charges on the Refunded Bonds with all Refunded Bonds being called for optional redemption on December \_\_, 2019, in each case at a redemption price of 100% of par.

<u>Date</u>	<u>Refunded 2009A Bonds</u>			<u>Refunded 2009B Bonds</u>			<u>All Refunded Bonds</u>
	<u>Interest Due</u>	<u>Principal Due</u>	<u>Total Due</u>	<u>Interest Due</u>	<u>Principal Due</u>	<u>Total Due</u>	<u>Total Due</u>
December 1, 2019	\$ 112,500.00	\$ 0.00	\$ 112,500.00	\$128,520.00	\$ 0.00	\$128,520.00	\$ 241,020.00
December __, 2019	.00	5,000,000.00	.00	[0.00]	4,080,000.00		

EXHIBIT B

GOVERNMENT OBLIGATIONS FOR ESCROW FUND

<b>Description</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Maturity Date</b>	<b>Total Cost</b>
Certificate	\$	%	12/01/2019	\$
Certificate			12/__/2019	
				<u>\$00</u>



EXHIBIT C

**CERTIFICATE OF ESCROW TRUSTEE**

As a duly authorized officer of The Bank of New York Mellon Trust Company, N.A. (the Escrow Trustee), as escrow trustee under the Escrow Agreement dated as of [November 1], 2019 (the Escrow Agreement) between the City of Toledo, Ohio (the City), and the Escrow Trustee, and with all capitalized terms being used as defined in the Escrow Agreement, I certify that:

1. The Escrow Trustee has received from the City (i) \$\_\_\_\_\_ from the proceeds of the Refunding Bonds [and (ii) \$\_\_\_\_\_ of other funds available to the City, in immediately available funds. The \$\_\_\_\_\_ of additional funds deposited in the Escrow Fund shall be held in cash, uninvested.] Of the proceeds of the Refunding Bonds deposited in the Escrow Fund, \$\_\_\_\_\_ have been used immediately by the Escrow Trustee to purchase the Government Obligations identified in Exhibit B, and the remaining \$\_\_\_\_\_ shall be held in cash, uninvested.

2. The Escrow Trustee, as representative of the beneficial owners of the Refunded Bonds, presently holds [that cash and] those Government Obligations in those respective accounts in the Escrow Fund in trust for and irrevocably committed to the payment of Accruing Debt Charges.

3. The Escrow Trustee has received the Verification Report of [Causey Demgen & Moore P.C.], dated [November \_\_], 2019, as to the sufficiency of [that cash and] those Governmental Obligations and the interest income on those Governmental Obligations, without further investment or reinvestment of either principal or investment earnings thereon, for the payment of the Accruing Debt Charges.

4. Within 5 days after the date of this Certificate, the Escrow Trustee will give the notices required by subsection (a) of Section 8 of the Escrow Agreement.

5. The Escrow Agreement has been duly authorized, executed and delivered by and in the name and on behalf of the Escrow Trustee.

**The Bank of New York Mellon Trust Company, N.A.**  
Escrow Trustee

Dated: [November \_\_], 2019

By: \_\_\_\_\_  
Vice President

EXHIBIT D

**NOTICE OF REFUNDING, DEFEASANCE AND REDEMPTION**

**CITY OF TOLEDO, OHIO**

**CAPITAL IMPROVEMENT AND REFUNDING BONDS, SERIES 2009**

Dated as of October 15, 2009 and stated to mature on December 1 in 2024 and 2029

**CUSIPs No. 889278 QD2 and No. 889278 QE0**

**STREET IMPROVEMENT BONDS, SERIES 2009**

**(Federally Taxable – Recovery Zone Economic Development Bonds – Direct Payment)**

Dated as of October 15, 2009 and stated to mature on December 1, 2025

**CUSIP No. 889278 PQ4**

Notice is hereby given that the following bonds have been refunded and defeased in advance of their stated maturity dates and are deemed paid and discharged:

(a) all of the outstanding City of Toledo, Ohio, Capital Improvement and Refunding Bonds, Series 2009, dated as of October 15, 2009, and stated to mature on December 1 in the years 2024 and 2029 (the Refunded Series 2009A Bonds), and

(b) \$4,080,000 of the outstanding City of Toledo, Ohio, Street Improvement Bonds, Series 2009 (Federally Taxable – Recovery Zone Economic Development Bonds – Direct Payment), dated as of October 15, 2009, and stated to mature on December 1, 2025 (the Refunded Series 2009B Bonds and, together with the Refunded Series 2009A Bonds, collectively, the Refunded Bonds).

On [November \_\_], 2019, there were deposited in an irrevocable trust fund with The Bank of New York Mellon Trust Company, N.A. (the Escrow Trustee), as escrow trustee under the Escrow Agreement dated as of [November 1], 2019, between the City and the Escrow Trustee, cash and non-callable direct obligations of the United States of America that mature or are subject to redemption by and at the option of the holder, in amounts sufficient, without further investment or reinvestment, for the payment when due of (a) interest on the Refunded Bonds payable on December 1, 2019, and (b) the principal of and interest on the Refunded Bonds payable on upon their redemption on December \_\_, 2019.

Irrevocable instructions have been given by the City to The Bank of New York Mellon Trust Company, N.A., as the designated bond registrar and paying agent for the Refunded Bonds, that the Refunded Bonds shall be called for optional redemption on December \_\_, 2019, at a redemption price equal to 100% of the principal amount redeemed plus interest accrued to the redemption date.

**CITY OF TOLEDO, OHIO**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**  
as Escrow Trustee

Dated: November \_\_, 2019

EXHIBIT E-1

**NOTICE OF REDEMPTION**

**CITY OF TOLEDO, OHIO**

**CAPITAL IMPROVEMENT AND REFUNDING BONDS, SERIES 2009**

Dated as of October 15, 2009 and stated to mature on December 1 in 2024 and 2029

**CUSIPs No. 889278 QD2 and No. 889278 QE0**

Notice is hereby given that the Council of the City of Toledo, Ohio, has exercised its option to call for redemption on December \_\_, 2019, all of the outstanding City of Toledo, Ohio, Capital Improvement and Refunding Bonds, Series 2009, dated as of October 15, 2009 and stated to mature on December 1 the years 2024 and 2029 (collectively, the Bonds), in accordance with the provisions of Ordinances No. 414-09, 416-09 and 418-09, each passed August 4, 2009 by the Council of the City, and the related certificate of award dated October 8, 2009, signed by the City's Director of Finance as authorized therein (collectively, the Bond Legislation), under which the Bonds were issued. The redemption price for the Bonds is equal to 100% of the principal amount of the Bonds redeemed, plus interest accrued to December \_\_, 2019.

The outstanding Bonds to be redeemed are identified as follows:

Maturity Date	Interest Rate	Aggregate Principal Amount	CUSIP Number	Bond Numbers
December 1, 2024	4.000%	\$ 2,500,000	889278 QD2	
December 1, 2029	5.000	2,500,000	889278 QE0	

In accordance with the Bond Legislation, on December \_\_, 2019 the Bonds shall cease to bear interest.

Principal of and interest accrued to December \_\_, 2019 on the Bonds will be payable upon presentation and surrender of those Bonds [at the Dallas, Texas corporate trust office of The Bank of New York Mellon Trust Company, N.A.], as the bond registrar and paying agent for the Bonds, to the person in whose name a Bond is registered, and to that person's address appearing, on the Bond Register for the Bonds at the close of business on November \_\_, 2019.

**CITY OF TOLEDO, OHIO**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Bond Registrar**

Dated: \_\_\_\_\_, 2019

NOTICE REQUIREMENTS:

To be mailed by first class mail, postage prepaid, at least 30 days prior to December \_\_, 2019, to the registered owner of each Bond at the registered owner's address shown on the Bond Register at the close of business on the 15<sup>th</sup> day preceding that mailing.

EXHIBIT E-2

**NOTICE OF REDEMPTION**

**CITY OF TOLEDO, OHIO**

**STREET IMPROVEMENT BONDS, SERIES 2009**

**(Federally Taxable – Recovery Zone Economic Development Bonds – Direct Payment)**

Dated as of October 15, 2009 and stated to mature on December 1, 2025

**CUSIP No. 889278 PQ4**

Notice is hereby given that the Council of the City of Toledo, Ohio, has exercised its option to call for redemption on December \_\_, 2019, \$4,080,000 of the outstanding City of Toledo, Ohio, Street Improvement Bonds, Series 2009 (Federally Taxable – Recovery Zone Economic Development Bonds – Direct Payment), dated as of October 15, 2009, and stated to mature on December 1, 2025 (collectively, the Bonds), in accordance with the provisions of Ordinance No. 417-09, passed on August 4, 2009 by the Council of the City, and the related certificate of award dated October 8, 2009, signed by the City’s Director of Finance as authorized therein (collectively, the Bond Legislation), under which the Bonds were issued. The redemption price for the Bonds is equal to 100% of the principal amount of the Bonds redeemed, plus interest accrued to December \_\_, 2019.

The outstanding Bonds to be redeemed are identified as follows:

Maturity Date	Interest Rate	Aggregate Principal Amount	CUSIP Number	Bond Numbers
December 1, 2024	6.300%	\$ 4,080,000	889278 PQ4	

In accordance with the Bond Legislation, on December \_\_, 2019 the Bonds shall cease to bear interest.

Principal of and interest accrued to December \_\_, 2019 on the Bonds will be payable upon presentation and surrender of those Bonds [at the Dallas, Texas corporate trust office of The Bank of New York Mellon Trust Company, N.A.], as the bond registrar and paying agent for the Bonds, to the person in whose name a Bond is registered, and to that person’s address appearing, on the Bond Register for the Bonds at the close of business on November \_\_, 2019.

**CITY OF TOLEDO, OHIO**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Bond Registrar**

Dated: \_\_\_\_\_, 2019

NOTICE REQUIREMENTS:

To be mailed by first class mail, postage prepaid, at least 30 days prior to December \_\_, 2019, to the registered owner of each Bond at the registered owner's address shown on the Bond Register at the close of business on the 15<sup>th</sup> day preceding that mailing.

## EXHIBIT F

### CERTIFICATE OF DIRECTOR OF FINANCE

As Director of Finance of the City of Toledo, Ohio (the City), I hereby certify, with each capitalized term used but not defined having the meaning assigned to it in the Escrow Agreement dated as of [November 1], 2019 (the Escrow Agreement), between the City and The Bank of New York Mellon Trust Company, N.A., as escrow trustee (the Escrow Trustee), that:

- a. I have received (i) a certificate of the Escrow Trustee substantially in the form attached as Exhibit C to the Escrow Agreement concerning the deposit in the Escrow Fund of the amounts described in Section 3 of the Escrow Agreement and purchase by the Escrow Trustee of the Government Obligations described in Exhibit B to the Escrow Agreement, and (ii) the initial Verification Report of Causey Demgen & Moore P.C., an independent public accounting firm, to which reference is made in Section 7 of the Escrow Agreement.
- b. In accordance with the provisions of Section 133.34 of the Ohio Revised Code, the \$5,000,000 of the City's Capital Improvement and Refunding Bonds, Series 2009, dated as of October 15, 2009 and stated to mature on December 1 in each of the years 2024 and 2029, are no longer considered to be outstanding.
- c. In accordance with the provisions of Section 133.34 of the Ohio Revised Code, \$4,080,000 of the City's Street Improvement Bonds, Series 2009 (Federally Taxable – Recovery Zone Economic Development Bonds – Direct Payment), dated as of October 15, 2009, and stated to mature on December 1, 2025, are no longer considered to be outstanding.

[Dated: November \_\_, 2019]

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Director of Finance  
City of Toledo, Ohio