

COOPERATIVE AGREEMENT

by and among

TOLEDO-LUCAS COUNTY PORT AUTHORITY

and

CLEVELAND-CUYAHOGA COUNTY PORT AUTHORITY

and

COLUMBUS-FRANKLIN COUNTY FINANCE AUTHORITY

and

CITY OF TOLEDO, OHIO

and

THE TOLEDO MUSEUM OF ART

and

TOLEDO, OREGON, MAUMEE, NORTHWOOD, PERRYSBURG, SYLVANIA, WHITEHOUSE, TOWNSHIP OF MONCLOVA, TOWNSHIP OF SPRINGFIELD, TOWNSHIP OF SWANTON, TOWNSHIP OF SYLVANIA, OHIO  
ADVANCED ENERGY IMPROVEMENT CORPORATION d/b/a  
NORTHWEST OHIO ADVANCED ENERGY IMPROVEMENT DISTRICT;

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|--|--|--|
| <p style="text-align: center;">\$[11,000,000]</p> <p style="text-align: center;">Toledo-Lucas County Port Authority<br/>Development Revenue Bonds<br/>(Northwest Ohio Bond Fund) Series<br/>2024C<br/>(Toledo Museum of Art Project)</p> | <p style="text-align: center;">\$[6,585,000]</p> <p style="text-align: center;">Cleveland-Cuyahoga County Port<br/>Authority<br/>Development Revenue Bonds<br/>(Port of Cleveland Bond Fund)<br/>Series 2024C<br/>(Toledo Museum of Art Project)</p> | <p style="text-align: center;">\$[6,585,000]</p> <p style="text-align: center;">Columbus-Franklin County Finance<br/>Authority<br/>Development Revenue Bonds<br/>(Central Ohio Regional Bond Fund)<br/>Series 2024A<br/>(Toledo Museum of Art Project)</p> |
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Dated as of  
[\_\_\_], 2024

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COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (this “Agreement”) is made and entered into as of [\_\_\_], 2024, by and among the TOLEDO-LUCAS COUNTY PORT AUTHORITY, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State (the “Toledo Port”), the CLEVELAND-CUYAHOGA COUNTY PORT AUTHORITY, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State (the “Cleveland Port”), the COLUMBUS-FRANKLIN COUNTY FINANCE AUTHORITY, , a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State (the “Columbus Finance Authority,” and together with the Toledo Port and the Cleveland Port, the “Issuers”), the CITY OF TOLEDO, OHIO, a municipal corporation and political subdivision duly organized and validly existing under the laws of the State and its Charter (the “City”), THE TOLEDO MUSEUM OF ART, a nonprofit corporation duly organized and validly existing under the laws of the State (the “Owner”), and the TOLEDO, OREGON, MAUMEE, NORTHWOOD, PERRYSBURG, SYLVANIA, WHITEHOUSE, TOWNSHIP OF MONCLOVA, TOWNSHIP OF SPRINGFIELD, TOWNSHIP OF SWANTON, TOWNSHIP OF SYLVANIA, OHIO ADVANCED ENERGY IMPROVEMENT CORPORATION, doing business under the registered trade name NORTHWEST OHIO ADVANCED ENERGY IMPROVEMENT DISTRICT, a nonprofit corporation and special improvement district duly organized and validly existing under the laws of the State (the “ESID”), under the circumstances summarized in the following recitals (the capitalized terms used and not defined in the recitals have the meanings given to them in Article I of this Agreement):

A. The Owner is the owner of certain parcels of real property more fully described in **Exhibit A** attached to and made a part of this Agreement (collectively, the “Property”).

B. The ESID was created under Ohio Revised Code Chapters 1702 and 1710 as an energy special improvement district and nonprofit corporation created to further the public purposes of implementing “special energy improvement projects” within its territory under the Issuers in Ohio Revised Code Chapter 1710 and Article VIII, Section 2o of the Ohio Constitution.

C. The Owner intends to acquire, construct, equip, install, and improve certain special energy improvement projects and port authority facilities more particularly described in **Exhibit B** to this Agreement (the “Project”) at the Property.

D. The Owner intends to finance a portion of the costs of the Project under this Agreement and to secure the obligation to repay such financing by special assessments levied against the Property under Ohio Revised Code Chapter 1710.

E. In order to add the Property to the territory of the ESID and to cause the special assessments to be levied to pay a portion of the costs of the Project, the Owner submitted to the City a “Petition for Special Assessments for Special Energy Improvement Projects,” including the “Supplemental Plan” attached to it (the “Petition”) on [\_\_\_], 2024.

F. On [\_\_\_], 2024, by its Ordinance O-[\_\_\_]-24, the City approved the Petition and levied the maximum schedule of special assessments described in the Petition on the Property in order to pay a portion of the costs of the Project, and on or before the Closing Date the City certified a reduction in the amount of the maximum special assessments, as provided in the Petition, in order to cause the special assessments to be levied and collected in amounts necessary to pay debt service on the Project Bonds (the “Special Assessments”).

G. The Issuers, the City, the Owner, and the ESID each have determined that the most efficient and effective way to implement the financing, acquisition, construction, equipment, improvement, and installation of the Project and to further the public purposes set forth above is through this Agreement with (i) the Issuers issuing their Project Bonds in order to make a portion of the proceeds of the Project Bonds available to pay a portion of the costs of the Project, (ii) the Issuers making a portion of the proceeds of the Project Bonds available to finance the costs of the special energy improvement projects described in the Petition, (iii) the Owner acquiring, constructing, installing, equipping, and improving the Project, (iv) the Owner agreeing to make payments in an aggregate amount that will provide revenues sufficient to pay the Financing Payments and (v) the Owner agreeing to secure its obligations to make Financing Payments on the Project Bonds with special assessments in the maximum amount of the Special Assessments.

H. The Issuers, the City, the Owner, and the ESID, each have full right and lawful authority to enter into this Agreement and to perform and observe its provisions on each party’s respective part to be performed and observed.

NOW THEREFORE, in consideration of the premises and the mutual representations and agreements contained in this Agreement, the Issuers, the City, the Owner, and the ESID, agree as follows (provided that any obligation of an Authority created by or arising out of this Agreement shall never constitute a general debt of the Issuers or give rise to any pecuniary liability of the Issuers but shall be payable solely out of the Pledged Revenues available to the Issuers; and provided further that any obligation of the City to make Financing Payments or other payments under this Agreement shall never constitute a general debt of the City or give rise to any pecuniary liability of the City but shall be payable solely from the Special Assessments and any Delinquency Amounts).

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## ARTICLE I

### Definitions

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to the Indentures or another document, the words and terms defined in Section 1.2 of this Agreement shall have the meanings given to them in Section 1.2. The definitions in Section 1.2 shall be equally applicable to both the singular and plural forms of any of the words and terms defined.

Section 1.2. Definitions. As used in this Agreement:

“Act” means Ohio Revised Code Chapter 4582, inclusive, as duly enacted and amended from time to time.

“Administrative Amounts” includes the fees and reasonable expenses of the Trustees, the Agent, the Issuers, the Issuers Semi-Annual Fees, the Trustee Semi-Annual Fees, the ESID Fees, and any amounts (other than the Bond Service Charges) required to be paid under this Agreement, including, but not limited to reasonable attorneys’ fees, amounts expended by the Issuers, the ESID, the Agent, or the Trustees in pursuing remedies, and the levy, collection, and transfer of the Special Assessments and expenses incurred to comply with continuing disclosure obligations.

“Affiliate” means, with respect to a specified Person, any other Person which directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such Person (“control” meaning the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise).

“Agent” means the Person or Persons from time to time designated as the “agent” under the Disbursing, Payment, and Collateral Agreement, and initially means the NWOBF Trustee, together with its or their permitted successors and assigns.

“Agreement” means this Cooperative Agreement as it may be duly amended or supplemented and in effect from time to time.

“Authorized City Representative” means the Mayor, the Director of Finance or the Director of Law of the City or the person at the time designated to act on behalf of the City by written certificate furnished to the Issuers and the Trustees containing the specimen signature of that person and signed on behalf of the City by its Mayor. That certificate may designate an alternate or alternates. In the event that the Mayor and all persons so designated become unavailable or unable to act and the City fails to designate a replacement within ten days after such unavailability or inability to act the Issuers may appoint an interim Authorized City Representative until such time as the City designates that person.

“Authorized Owner Representative” means the person at the time designated to act on behalf of the Owner by written certificate furnished to the Issuers and the Agent containing the

specimen signature of that person and signed on behalf of the Owner. That certificate may designate an alternate or alternates.

“Bond Legislation” means, collectively, the authorizing resolutions and any certificates of award approved by the boards of directors of the Issuers and their duly authorized officers authorizing the issuance of the Project Bonds, all as may duly be amended and supplemented and in effect from time to time.

“Bond Purchase Agreements” means, collectively, the NWOBF Bond Purchase Agreement, the POCBF Bond Purchase Agreement, and the CORBF Bond Purchase Agreement, and “Bond Purchase Agreement” means any one of them.

“Bond Reserve Deposits” means, the Bond Reserve Deposits as defined in the Indentures.

“Bond Service Charges” shall have the meaning assigned to that term in the Indentures.

“Bond Year” shall have the meaning assigned to that term in the Indentures.

“Business Day” means a day that is not a (i) Saturday, (ii) Sunday, or (iii) day on which the Trustee is closed or banks in New York, New York are closed.

“City” means the City of Toledo, Ohio, a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State and its Charter.

“Cleveland Port” means the Cleveland-Cuyahoga County Port Authority, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State.

“Closing Date” means [\_\_\_], 2024.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Project Bonds.

“Columbus Finance Authority” means the Columbus-Franklin County Finance Authority, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State.

“Computation Date” means the last day of each Bond Year and the date on which the final payment in full of all outstanding Project Bonds of each series is made or such other date or dates elected by the Issuers as may be permitted under the Code for computation of amounts owed as rebate.

“Completion Date” means the date of completion of the Project in accordance with the requirements of Article III of this Agreement.

“Construction Services Agreement” means the Construction Services Agreement dated as of the date of this Agreement between the Toledo Port and the Construction Services Provider, as duly amended or supplemented from time to time.

“Construction Services Provider” means the Owner, as the Construction Services Provider under the Construction Services Agreement, or its permitted successors or assigns under the Construction Services Agreement.

“Continuing Disclosure Agreements” means, collectively, the Continuing Disclosure Agreements as defined in the Indentures.

“Cooperative Agreement” means this Agreement, as it may duly be amended and supplemented and in effect from time to time.

“Cooperative Parties” means the City, the Issuers, the Owner, and the ESID.

“CORBF Bonds” means the Columbus Finance Authority’s Development Revenue Bonds (Port of Cleveland Bond Fund) Series 2024A (Toledo Museum of Art Project) issued under the CORBF Indenture.

“CORBF Bond Purchase Agreement” means the Bond Purchase Agreement by and between the Columbus Finance Authority, the Owner, and the Underwriter, as it may be amended and supplemented from time to time.

“CORBF Indenture” means the Amended and Restated Trust Indenture, dated as of December 1, 2007, between the Columbus Finance Authority and the CORBF Trustee, as it may duly be amended and supplemented from time to time, including by the [ ] Supplemental Indenture, between the Columbus Finance Authority and the CORBF Trustee, dated as of the date of this Agreement.

“CORBF Trustee” means The Huntington National Bank, a national banking association organized under the laws of the United States, as trustee under the CORBF Indenture, until a successor trustee shall have become such pursuant to the applicable provisions of the CORBF Indenture, and thereafter “CORBF Trustee” shall mean the successor trustee.

“County” means Lucas County, Ohio, a county and political subdivision duly organized and validly existing under the Constitution and laws of the State.

“County Auditor” means the Auditor of Lucas County, Ohio or any officer succeeding to the duties of a county auditor for the County.

“County Treasurer” means the Treasurer of Lucas County, Ohio or any officer succeeding to the duties of a county treasurer for the County.



“Delinquency Amounts” means any penalties or interest which may be due on or with respect to any installment of the Special Assessments and which are not paid or payable to any party other than the Issuers under law.

“Disbursement Request” means a request by the Owner for disbursement from the Project Account to pay or reimburse eligible costs of the Project in accordance with this Agreement and the Disbursing, Payment, and Collateral Agreement and made on the form attached to the Disbursing, Payment, and Collateral Agreement.

“Disbursing, Payment, and Collateral Agreement” means the Disbursing, Payment, and Collateral Agreement dated as of the date of this Agreement by and between the Issuers, the Trustees, the Owners, and the Agent, as it may be amended and supplemented from time to time.

“Environmental Laws” means all applicable federal, state, and local environmental, land use, zoning, health, chemical use, safety, and sanitation laws, statutes, ordinances, and codes relating to the protection of the environment and/or governing use, storage, treatment, generation, transportation, processing, handling, production, or disposal of Hazardous Materials and the rules, regulations, policies, guidelines, interpretations, decisions, orders, and directives of federal, state, and local governmental agencies and authorities with respect thereto, including, without limitation, CERCLA and Chapter 3734 of the Ohio Revised Code.

“ESID Fee” means the fee due to the ESID with each installment of the Special Assessments for its administrative expenses in the amount of 0.50% of the principal, interest, Issuers Semi-Annual Fee, and Trustees Semi-Annual fee components of each semi-annual installment of the Special Assessments, as detailed in **Exhibit C**.

“Event of Default” means any of the events described as an Event of Default in Section 7.1 of this Agreement.

“Excess Earnings” means, as of each Computation Date, an amount equal to the sum of (i) plus (ii), where:

- (i) is the excess of
  - (a) the aggregate amount earned from the date of issuance of the applicable series of Project Bonds on all nonpurpose investments in which gross proceeds of the applicable series of Project Bonds are invested (other than investments attributable to excess earnings described in this clause (i)), including any gain and deducting any loss from disposition of nonpurpose investments, over
  - (b) the amount which would have been earned if those nonpurpose investments (other than amounts attributable to an excess described in this clause (i)) had been invested at a rate equal to the yield on the applicable series of Project Bonds; and

- (ii) is any income attributable to the excess described in this definition, taking into account any gain or loss on the disposition of investments.

The foregoing sums shall be determined in accordance with Section 148(f) of the Code. As used herein, the terms “gross proceeds,” “nonpurpose investments,” and “yield” have the meanings assigned to them for purposes of Section 148 of the Code.

“Financing Payment” means the Required Amounts and any Administrative Amounts required to be paid to the Agent on any Financing Payment Date, including the amounts of the Special Assessments required to be paid by the City to the Agent under Section 4.1 of this Agreement and allocable to each of the Issuers.

“Financing Payment Date” means each date on which (i) the Owner pays Financing Payments to the Agent as provided under this Agreement or (ii) the City pays to the Agent the Special Assessments, which payments shall be made by the City within 20 Business Days following the City’s receipt of Special Assessments from the County Treasurer, but in no case later than May 1 and November 1 of each year during which the Special Assessments are levied and collected.

“Force Majeure” means any of the causes, circumstances or events described as constituting Force Majeure in Section 7.1 of this Agreement.

“Hazardous Materials” means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials as defined in Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. §§9601 *et seq.*) (“CERCLA”), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§1801, *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. §§6901 *et seq.*) (“RCRA”), or any other applicable Environmental Law and in the regulations adopted pursuant thereto.

“Holder” or “Holder of a Bond” shall have the meaning assigned to that term in the Indentures.

“Indentures” means, collectively, the NWOBF Indenture, the POCBF Indenture, and the CORBF Indenture, and “Indenture” means any one of them.

“Interest Payment Date” or “Interest Payment Dates” means the fifteenth day of each May and November, commencing May 15, 2025.

“Interest Rate for Advances” means the lesser of the rate of interest which is 2% in excess of the rate announced from time to time by the NWOBF Trustee in its capacity as a lending institution as its “prime rate” or “base rate” or the maximum rate chargeable under applicable law.

“Issuers Semi-Annual Fee” means, semi-annual administrative fees of each of the Issuers, each equal to 0.60% of the outstanding principal amount of each Issuer’s respective Project Bonds immediately preceding the Interest Payment Date for which any Financing Payment

is to be made to be paid out of the Financing Payments as shown on **Exhibit C** to and incorporated into this Agreement.

“Legislative Authority” means, each Board of Directors of each of the Issuers.

“Major Subcontractors” means any subcontractor or material provider who provides services or materials for the Project in excess of \$750,000.

“Notice Address” means:

- (a) As to the Toledo Port: Toledo-Lucas County Port Authority  
One Maritime Plaza  
Toledo, Ohio 43604-1866  
Attention: President and CEO
- (b) As to the Cleveland Port: Cleveland-Cuyahoga County Port Authority  
1100 West Ninth St., Suite 300  
Cleveland, Ohio 44113  
Attention: President and CEO
- (c) As to the Columbus Finance Authority: Columbus-Franklin County Finance Authority  
300 Spruce Street, Suite 220  
Columbus, Ohio 43215  
Attention: President
- (d) As to the City: City of Toledo, Ohio  
One Government Center, Suite 2250  
Toledo, Ohio 43604  
Attention: Mayor
- (e) As to the Agent: The Bank of New York Mellon  
Trust Company, N.A.  
601 Travis Street, 16<sup>th</sup> Floor  
Houston, Texas 77002  
Attention: Leslie Lee, Client Service  
Manager, Corporate Trust  
Department
- (f) As to the Owner: The Toledo Museum of Art  
2445 Monroe Street  
Toledo, Ohio 43620  
Attention: Chief Financial Officer

(g) As to the ESID: Northwest Ohio Advanced Energy Improvement District  
One Maritime Plaza, 7th Floor  
Toledo, Ohio 43604  
Attention: Chairperson

With a Copy to: Toledo-Lucas County Port Authority  
One Maritime Plaza, 7th Floor  
Toledo, Ohio 43604  
Attention: President

And: Bricker Graydon LLP  
100 South Third Street  
Columbus, Ohio 43215  
Attention: J. Caleb Bell

or such additional or different address, notice of which is given under Section 9.2 of this Agreement.

“NWOBF Bonds” means the Toledo Port’s Development Revenue Bonds (Northwest Ohio Bond Fund) Series 2024C (Toledo Museum of Art Project) issued under the NWOBF Indenture.

“NWOBF Bond Purchase Agreement” means the Bond Purchase Agreement by and between the Toledo Port, the Owner, and the Underwriter, as it may be amended and supplemented from time to time.

“NWOBF Indenture” means the Trust Indenture, dated as of August 15, 1988, between the Toledo Port and the NWOBF Trustee, as it may duly be amended and supplemented from time to time, including by the One Hundred Tenth Supplemental Indenture, between the Toledo Port and the NWOBF Trustee, dated as of the date of this Agreement.

“NWOBF Trustee” means The Bank of New York Mellon Trust Company, N.A., a national banking association organized under the laws of the United States, as trustee under the NWOBF Indenture, until a successor trustee shall have become such pursuant to the applicable provisions of the NWOBF Indenture, and thereafter “NWOBF Trustee” shall mean the successor trustee.

“Owner” means The Toledo Museum of Art, a nonprofit corporation duly organized and validly existing under the laws of the State, together with its permitted successors and assigns under this Agreement.

“Petition” means the Petition for Special Assessments for Special Energy Improvement Projects, including the Supplemental Plan attached to it, submitted to the City on [\_\_\_], 2024 and approved by the City on [\_\_\_], 2024 by Ordinance O-[\_\_\_]-24.

“Person” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

“Plans and Specifications” means the drawings, surveys, maps, plats or other depiction, as amended through approved change orders, of the Project for construction on the Property.

“Pledged Revenues” shall have the meaning assigned to that term in the Indentures.

“POCBF Bond Purchase Agreement” means the Bond Purchase Agreement by and between the Cleveland Port, the Owner, and the Underwriter, as it may be amended and supplemented from time to time.

“POCBF Bonds” means the Cleveland Port’s Development Revenue Bonds (Port of Cleveland Bond Fund) Series 2024C (Toledo Museum of Art Project) issued under the POCBF Indenture.

“POCBF Indenture” means the Trust Indenture, dated as of November 1, 1997, between the Cleveland Port and the POCBF Trustee, as it may duly be amended and supplemented from time to time, including by the [ ] Supplemental Indenture, between the Cleveland Port and the POCBF Trustee, dated as of the date of this Agreement.

“POCBF Trustee” means The Huntington National Bank, a national banking association organized under the laws of the United States, as trustee under the POCBF Indenture, until a successor trustee shall have become such pursuant to the applicable provisions of the POCBF Indenture, and thereafter “POCBF Trustee” shall mean the successor trustee.

“Project” means the special energy improvement projects to be completed by the Owner on the Property constituting a “project” and “port authority facilities” as defined in the Act for the Project Purposes, all as more particularly described in **Exhibit B** to this Agreement.

“Project Account” means the Project Account as defined in the Disbursing, Payment, and Collateral Agreement.

“Project Purposes” means providing funds to finance a portion of the Owner’s costs of constructing the Project for commercial, education, culture, and economic development purposes, or as may otherwise be permitted by this Agreement.

“Property” means the real property more fully described in **Exhibit A** attached to and made a part of this Agreement.

“Required Amounts” means the Bond Service Charges and the Scheduled Administrative Payments with respect to the Project Bonds in the amounts shown on **Exhibit C** attached to, and incorporated into, this Agreement.

“Required Insurance Coverage” means, collectively, the Required Property Insurance Coverage and the Required Public Liability Insurance Coverage, each of which, in addition to the requirements described in their respective definitions, (i) must provide for 10 days’ notice to the Issuers in the event of cancellation or nonrenewal and (ii) must name as an additional insured (mortgagee/loss payee) the Issuers.

“Required Property Insurance Coverage” means at any time insurance coverage evidenced maintained with generally recognized, responsible insurance companies qualified to do business in the State in the amount of the full replacement value of the Project and the Property or such other coverage as is customarily acceptable to commercial lenders for similar projects, provided that at all times such coverage shall be at least in an amount sufficient to fully prepay, defease, or redeem, as appropriate (a) the Project Bonds in accordance with this Agreement and (b) any then-outstanding mortgage-secured loans on the Property in accordance with their terms, insuring the Project against loss or damage by fire, windstorm, tornado, and hail and extended coverage risks on a comprehensive all risk/special form insurance policy and containing loss deductible provisions of not to exceed the maximum deductible allowed by the Owner’s mortgage lender, which insurance coverage shall name the Issuers as loss payee/mortgagee.

“Required Public Liability Insurance Coverage” means at any time commercial general liability insurance against claims for personal injury, death, or property damage suffered by others upon, in or about any premises occupied by the Owner, which insurance coverage shall name the Issuers as an additional insured.

“Scheduled Administrative Payments” means such Administrative Amounts as are scheduled to be paid on a semi-annual basis as shown on **Exhibit C** attached to, and incorporated into, this Agreement.

“Project Bonds” means, collectively, the NWOBF Bonds, the POCBF Bonds, and the CORBF Bonds.

“Special Assessment Act” means, collectively, Ohio Revised Code Section 727.01 *et seq.*, Ohio Revised Code Section 1710.01 *et seq.*, Ohio Revised Code Section 323.01 *et seq.*, Ohio Revised Code Section 319.01 *et seq.*, Ohio Revised Code Section 5721.01 *et seq.*, and related laws.

“Special Assessment Agreement” means the Special Assessment Agreement dated as of the date of this Agreement among the County Treasurer, the City, the Owner, the ESID, the Issuers, and the Agent, as duly amended or supplemented from time to time.

“Special Assessment Fund” means the City’s segregated fund established for the collection of the Special Assessments.

“Special Assessment Legislation” means, collectively, the Petition and Ordinance O-[\_\_\_\_]-24, duly adopted by the City on [\_\_\_\_], 2024.

“Special Assessments” means the portion of the special assessments levied by the City against the Property under its Ordinance No. O-[\_\_]-24 adopted on [\_\_\_\_]A, 2024 certified by the City to the County Auditor for collection with real property taxes.

“Special Funds” means the Special Funds as defined in the Indentures.

“State” means the State of Ohio.

“Toledo Port” means the Toledo-Lucas County Port Authority, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State.

“Transaction Documents” means, collectively, this Agreement, the Indentures, the Disbursing, Payment, and Collateral Agreement, the Construction Services Agreement, the Special Assessment Agreement, the Bond Purchase Agreements, and any other document, agreement, or instrument executed and delivered in connection with the Project Bonds and the transactions contemplated under this Agreement.

“Trustees” means, collectively, the NWOBF Trustee, the POCBF Trustee, and the CORBF Trustee and “Trustee” means any one of them.

“Trustees Semi-Annual Fee” means, semi-annual fees of each of the Trustees each equal to the greater of 0.06% of the outstanding principal amount of the respective Project Bonds for which the Trustee is serving as Trustee immediately preceding the Interest Payment Date for which any Financing Payment is to be made or \$625.00, to be paid out of the Financing Payments as shown on **Exhibit C** to and incorporated into this Agreement.

“Unassigned Issuers Rights” means the rights of each of the Issuers to be held harmless and indemnified under Section 5.2 of this Agreement, to receive notice of litigation under Section 5.3 of this Agreement, to be reimbursed for attorney fees and expenses under Section 7.4 of this Agreement, to make requests and give or withhold consent including, without limitation, requests under Section 3.8 of this Agreement, and consent to amendments, changes, modifications, alterations, and termination of this Agreement under Section 8.5 of this Agreement.

“Underwriter” means, the Person or Persons identified in the Bond Purchase Agreements as the underwriter and/or original purchaser for the Project Bonds.

Section 1.3. Interpretation. Any reference in this Agreement to the Issuers, to the Legislative Authority, or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a Section or provision of the Constitution of the State or the Act, to a section, provision, or chapter of the Ohio Revised Code, or any other legislation or to any statute of the United States of America, includes that section, provision, or chapter as amended, modified, revised, supplemented, or superseded from time to time; provided, that no amendment, modification, revision, supplement, or superseding section, provision, or chapter shall be

applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the Cooperative Parties under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.4. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses of this Agreement.

(End of Article I)



## ARTICLE II

### Representations and Covenants

Section 2.1. Representations of the Issuers. Each of the Issuers represents that: (a) it is duly organized and validly existing under the laws of the State; (b) it is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Issuers which would impair its ability to carry out its obligations contained in this Agreement or the Transaction Documents to which it is a party; (c) it is legally empowered to enter into and carry out the transactions contemplated by this Agreement and the other Transaction Documents to which it is a party; (d) it has duly authorized the execution, delivery, and performance of this Agreement and the other Transaction Documents to which it is a Party; (e) it has duly accomplished all conditions necessary to be accomplished by it prior to the execution of the agreements necessary to issue its respective Project Bonds and to make the proceeds of its respective Project Bonds available for the Project Purposes; and (f) it will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement and the other Transaction Documents to which it is a party by any successor public body.

Section 2.2. Representations and Covenants of the City. The City represents and covenants that:

(i) It is a municipal corporation duly organized and validly existing under the Constitution and laws of the State and its Charter.

(ii) To the best of its knowledge, it is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the City which would impair its ability to carry out its obligations contained in this Agreement or the Transaction Documents to which it is a party.

(iii) It is legally empowered to execute, deliver, and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement, the Special Assessment Legislation, and the other Transaction Documents to which it is a party. To the best of its knowledge, that execution, delivery, and performance do not and will not violate or conflict with any provision of law applicable to the City, including but not limited to, its Charter, and do not, and will not, conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound.

(iv) It has duly authorized the execution, delivery, and performance of this Agreement and the other Transaction Documents to which it is a party and the transactions contemplated in this Agreement and in those Transaction Documents, and those transactions will enhance, aid, and promote authorized purposes of the City.

(v) It will do all things in its power in order to maintain its existence or assure the assumption by any successor public body of its obligations under this Agreement, the Special Assessment Legislation, and the other Transaction Documents to which it is a party.

(vi) The Special Assessment Legislation has been duly adopted, is in full force and effect, and is not subject to repeal by referendum.

(vii) Upon request of the Issuers, the City shall use its best efforts to deliver to the Issuers and Trustees such information as the Issuers may determine they may need in connection with any obligation they have entered into, or may enter into, for the purpose of permitting an underwriter of the Project Bonds to satisfy the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Act of 1934.

Section 2.3. Representations and Covenants of the Owner.

(a) The Owner represents and covenants that:

(i) It is nonprofit corporation duly organized and validly existing under the laws of the State of Ohio.

(ii) It has full power and authority to execute, deliver, and perform this Agreement and the other Transaction Documents to which it is a party and to enter into and perform the transactions contemplated by those documents. That execution, delivery, and performance do not, and will not, violate any provision of law applicable to the Owner or the Owner's Articles of Incorporation, and do not conflict with or result in a default under any agreement or instrument to which the Owner is a party or by which it is bound. This Agreement has, by proper action, been duly authorized, executed, and delivered by the Owner and all steps necessary to be taken by the Owner have been taken to constitute this Agreement valid and binding obligations of the Owner.

(iii) The provision of financial assistance to be made available under this Agreement and the commitments for that assistance made by the Issuers and the ESID have induced the Owner to undertake the transactions contemplated by this Agreement and the other Transaction Documents to which it is a party and, based on the information currently available, the Owner believes such assistance will create and preserve jobs and employment opportunities within the City and the cooperative jurisdiction of the Issuers.

(iv) The Owner will construct the Project substantially in accordance with the Plans and Specifications and with the terms of this Agreement and the Construction Services Agreement and will maintain the

Project in such manner as to conform in all material respects with all applicable zoning, planning, building, environmental, and other applicable governmental regulations and as to be consistent with the Act.

(v) The Project will comply in all material respects with all applicable Environmental Laws.

(vi) Upon request of the Issuers, the Owner shall deliver to the Issuers and the Trustees such information as the Issuers may reasonably determine they may need in connection with any obligation they have entered into, or may enter into, for the purpose of permitting an underwriter of the Project Bonds to satisfy the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Act of 1934.

(vii) The Required Insurance Coverage is in place as of the date of this Agreement or will be in place as of the Completion Date (if applicable) and will be maintained at all times during the term of this Agreement, while the Project Bonds remain outstanding, and while any Special Assessments remain to be paid. Any return of insurance premium or dividends based upon the Required Insurance Coverage shall be due and payable solely to the Owner (or the Owner's mortgage lender), unless such premium shall have been paid by the Issuers, in accordance with the distribution priority specified in Section 3.10.

#### Section 2.4. Special Assessment Payments.

(a) The Special Assessment Proceedings. The City has taken all necessary actions required by the Special Assessment Act to levy and collect the Special Assessments on the Property.

Under Ohio Revised Code Section 727.33, the City has certified the Special Assessments to the County Auditor for collection, and, absent further certification by the City, the County Auditor shall collect the unpaid Special Assessments with and in the same manner as other real property taxes and pay the amount collected to the City. The Parties intend that the County Auditor and the County Treasurer shall have the duty to collect the Special Assessments through enforcement proceedings in accordance with applicable law.

As requested under the Petition and as authorized under Ohio Revised Code Section 323.071, the City has further authorized its fiscal officer to accept payment in cash of any installments of the Special Assessments charged against the Property and not due at the time that Ordinance O-[ ]-24 was adopted. The City hereby authorizes and directs the Agent to collect, for and on behalf of its fiscal officer, installments of the Special Assessments

in cash, which cash payments constitute the Financing Payments due from the Owner under Section 4.1 of this Agreement. The Agent and the Toledo Port shall provide written notice to the City of the payment of all or any portion of such installments of the Special Assessments paid in cash to the Agent (which payments constitute Financing Payments made by the Owner under Section 4.1 of this Agreement) by no later than [August 15] of each calendar year proceeding the year in which such installments of Special Assessments are due. Promptly upon receipt of written notice of such payment from the Agent and the Toledo Port, and in no event later than the last day on which municipal corporations may certify special assessments to the County Auditor, the City shall certify the fact of payment to the County Auditor under Ohio Revised Code Section 323.071, who shall thereupon cancel all or such portions of such installments on the County Auditor's records.

(b) Collection of Delinquent Special Assessments. The Issuers and the ESID are hereby authorized to take any and all actions as assignees of and, to the extent required by law, in the name of, for, and on behalf of, the City to collect delinquent Special Assessments levied by the City pursuant to the Special Assessment Act and to cause the lien securing the delinquent Special Assessments and any Delinquency Amounts to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the City to certify installments of the Special Assessments to the County Auditor and to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings. The proceeds of the enforcement of any such lien shall be deposited and used in accordance with this Agreement.

(c) Prepayment of Special Assessments. The Cooperative Parties agree that the Special Assessments assessed against the Property and payable to the City pursuant to the Special Assessment Act may be prepaid to the Agent by the Owner in accordance with Section 6.1 of this Agreement. Except as set forth in this Section 2.4 and Section 6.1 of this Agreement, the Owner shall not prepay any Special Assessments. Notwithstanding the foregoing, if the Owner attempts to cause a prepayment of the Special Assessments by paying to the County Treasurer any amount as a full or partial prepayment of Special Assessments, and if the City shall have knowledge of the same, the City immediately shall notify the Issuers and the Agent, and, unless provided the express written consent of the Issuers, the City shall not cause any reduction in the amount of Special Assessments. Except as specifically provided in this Agreement to the contrary, no other action pursuant to any provision of this Agreement shall abate in any way the payment of the Special Assessments by the owners of property or the transfer of the Special Assessments by the City to the Agent.

(d) Reduction of Special Assessments. The Parties agree that the Special Assessments may be subject to reduction, but only upon the express written consent or instruction of the Issuers. If the Owner causes the Special Assessments to be prepaid in accordance with Sections 2.4 and 6.1 of this Agreement, then upon the City's receipt of the Issuers' express written consent or instruction, the City shall take all necessary action to cause a reduction in the amount of Special Assessments levied such that, following such reduction, the amount of Special Assessments remaining to be paid shall be equal to the amounts necessary to pay, as and when due, any Financing Payments necessary to be paid to pay bond debt service on any unredeemed or undefeased Project Bonds following the prepayment. Without limiting the generality of the foregoing, following the certification of installments of the Special Assessments to the County Auditor, the City's obligation in the previous sentence to cause a reduction in the Special Assessments may include certifying to the County Auditor, prior to the last date in the then-current tax year on which municipal corporations may certify special assessments to the County Auditor, the necessary reduction. The Parties acknowledge and agree that if any installments of the Special Assessments are certified to the County Auditor for collection, the County Auditor may calculate, charge, and collect a collection fee on each semi-annual installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Auditor pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties. Notwithstanding anything in this Agreement to the contrary, the City shall not cause any reduction in the amount of Special Assessments without the prior written consent or instruction of the Issuers.

(e) Assignment of Special Assessments. The City agrees that it shall establish the Special Assessment Fund for the collection of the Special Assessments and Delinquency Amounts as a separate fund maintained on the City's books and records and to be held in the custody of a bank with which the City maintains a depository relationship. The City hereby assigns to the Issuers all of its right, title and interest in and to: (i) the Special Assessments and the Delinquency Amounts received by the City under the Special Assessment Legislation and this Agreement, (ii) the City's Special Assessment Fund established for the Project, and (iii) any other property received or to be received by the City under the Special Assessment Legislation and this Agreement. The City further shall transfer, set over, and pay the Special Assessments and Delinquency Amounts to the Agent in accordance with this Agreement. The ESID acknowledges and consents to the City's assignment of the Special Assessments and Delinquency Amounts to the Issuers. The Cooperative Parties agree that each of the City, the ESID, and the Issuers, as assignee of the Special Assessments and Delinquency Amounts, and the Agent, is authorized to take any and all

actions, whether at law, or in equity, to collect delinquent Special Assessments levied by the City pursuant to law and to cause the lien securing any delinquent Special Assessments and any Delinquency Amounts to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings.

(f) Transfer of Special Assessments. The parties anticipate that annual installments of the Special Assessments and any Delinquency Amounts will be paid to the City by the County Auditor and the County Treasurer in accordance with Ohio Revised Code Chapters 319, 321, 323, and 727.

Payment of the Special Assessments and any Delinquency Amounts to the Agent shall be made as described in this paragraph. Immediately upon receipt of any moneys received by the City as Special Assessments and Delinquency Amounts, but in any event not later than May 1 and November 1 of each year, the City shall deliver to the Agent all such moneys received by the City as Special Assessments and Delinquency Amounts by ACH or check as determined in the sole discretion of the City; provided, however, that if the amount of Special Assessments and Delinquency Amounts received by the City in any year are insufficient to pay Financing Payments due with respect to the Project Bonds and the ESID Fee, the Special Assessments and Delinquency Amounts received shall first be applied to the payment of the Financing Payments with respect to the Project Bonds in accordance with the Indentures, then to the payment of the ESID Fee.

The Issuers shall provide the City with account and payment information and may from time to time provide updated written account and payment information to the City for the payment of Special Assessments and Delinquency Amounts, but the City shall maintain its right to send the Special Assessments and Delinquency Amounts by ACH or check in its sole discretion.

If at any time during the term of this Agreement the County Auditor agrees, on behalf of the City, to disburse the Special Assessments and Delinquency Amounts to the Issuers or to the Issuers' direction pursuant to instructions or procedures agreed upon by the County Auditor and the City, then, upon each transfer of an installment of the Special Assessments and Delinquency Amounts from the County Auditor to the Issuers or to the Issuers' direction, the City shall be deemed to have satisfied all of its obligations under this Agreement to transfer that installment of the Special Assessments and the Delinquency Amounts to the Agent.

(g) Repayment of Project Bonds or Special Assessments. On the day immediately following each Interest Payment Date for which the Agent receives a Special Assessment installment (or portion of any Special Assessment installment) as shown on the Repayment Schedule attached as **Exhibit C**, the Agent shall pay to the ESID an amount equal to the semi-annual ESID Fee; provided, that if amounts received by the Agent as Special Assessments and Delinquency Amounts with respect to the applicable date on the Repayment Schedule are insufficient to pay all or any portion of the semi-annual ESID Fee due with respect to that date after application of the amount of Special Assessments received to Financing Payments then due and payable with respect to the Project Bonds, the Agent shall have no obligation to pay to the ESID any amount in excess of the amount received as Special Assessments with respect to that date. The Parties acknowledge and agree that the County Auditor may calculate, charge, and collect a fee on each semi-annual installment of the Special Assessments pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties, and that such fee shall be paid to the County Auditor with the Special Assessments, and that the County Auditor will retain such fee.

(h) No Contest of Special Assessments. The Owner further agrees that it will not contest the amount of the Special Assessments. The foregoing notwithstanding, the Owner may contest any fee charged by the County Auditor that the Owner determines in its reasonable discretion to be excessive or otherwise inconsistent with Ohio Revised Code Section 727.36, provided that if the effect of any such contest would have the effect of delaying the delivery of Special Assessments to the City or to the Agent under this Agreement, the Owner shall pay any amount of Special Assessments so affected directly to the Agent by not later than the applicable May 1 or November 1, as set forth on **Exhibit C**, and, after the full payment of any Financing Payments then due and payable out of amounts delivered directly by the Owner to the Agent as described above and amounts paid as Special Assessments, if necessary, any excess amounts previously paid as Special Assessments with respect to such scheduled payment and later paid to the City or to the Agent shall be returned to the Owner.

(i) Covenants Running With the Land. It is intended and agreed, and it shall be so provided in any future deed conveying the Property or any part of the Property, that the covenants and agreements provided in this Section 2.4 shall be covenants running with the land and that they shall, in any event and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit and in favor of and enforceable by the City whether or not this Agreement remains in effect or whether or not such provision is included

by in any succeeding deed. It is further intended and agreed that these agreements and covenants shall remain in effect for the full period during which the Special Assessments shall remain unpaid. Upon the payment in full of the Special Assessments, the City shall execute an instrument in recordable form evidencing such termination and releasing the covenants running with the land set forth in the deed.

Section 2.5. Special Assessment Agreement. The Special Assessment Agreement and the Owner Consent shall reference as covenants running with the land those covenants set forth in Section 2.4 of this Agreement and upon the Closing Date, the Owner Consent shall be recorded in the official records of the County. Each of those covenants shall be enforceable by the City, the ESID, or the Issuers, by mandatory injunction or any other remedy at law or in equity.

(End of Article II)



## ARTICLE III

### Cooperative Arrangements; Undertaking the Project; Issuance of the Project Bonds

Section 3.1. Cooperative Arrangements. The Owner, the City, and the ESID have requested the assistance of the Issuers in the financing of the Project as special energy improvement projects within the territory of the ESID. For the reasons set forth in this Agreement's recitals—which recitals are incorporated into this Agreement by this reference as a statement of the public purposes of this Agreement and the intended arrangements among the Cooperative Parties—the City and the ESID have requested the assistance and cooperation of the Issuers in the collection and payment of Special Assessments in accordance with this Agreement. The Cooperative Parties intend this Agreement to be, and it shall be, an agreement among the Cooperative Parties to cooperate in the financing, acquisition, construction, equipping, improvement, and installation of “special energy improvement projects,” pursuant to Ohio Revised Code Chapter 1710, and as that term is defined in Ohio Revised Code Section 1710.01(A) and “port authority facilities” under the Act. The Cooperative Parties intend this Agreement's provisions to be, and they shall be construed as, agreements to take effective cooperative action and to safeguard the Cooperative Parties' interests.

To the extent, if any, necessary, desirable or appropriate to implement the intent of this Agreement and in accordance with the Act, the Issuers undertakes to, and is authorized by the City to, exercise any power, perform any function and render any service, on behalf of the City, together with all necessary or incidental powers, to the fullest extent that the City is authorized to exercise, perform or render such power, function or service. Each power exercised, function performed, or service rendered by the Issuers under this Agreement, to the extent if any necessary to the implementation of this Agreement and the financing of the Project in the manner set forth in this Agreement, is undertaken by the Issuers on behalf of the City, pursuant to Revised Code Sections 4582.06 and 4582.17.

Section 3.2. Undertaking and Improvement of the Project. The Issuers, the Owner, and the ESID agree to undertake the Project for the Project Purposes, and the Owner agrees to undertake and construct the Project in accordance with the Owner's construction schedule and in accordance with the following:

(a) The Financing of the Project with Special Assessments. In order to provide moneys to finance costs of the Project, the Owner will pay to the Agent the Financing Payments, and the City will cause to be paid to the Agent, the Special Assessments and any Delinquency Amounts received by the City under this Agreement, if any, on or before each Financing Payment Date.

(b) Construction of the Development. The Owner shall, for and on behalf of the Issuers, undertake the Project in accordance with all applicable laws, and in accordance with this Article III and the Construction Services Agreement by constructing the Project.

Section 3.3. Plans and Specifications. The Plans and Specifications have been or will be filed with the City by the Owner. The Owner may revise the Plans and Specifications from

time to time, provided that no revision shall be made which would (i) change the Project Purposes in any material respect, without the written consent of the Issuers which consent shall not be unreasonably withheld, or (ii) change the Project Purposes to other than permitted by the Act.

Section 3.4. Issuance of the Project Bonds; Application of Proceeds. To provide funds to pay for the Project pursuant to the Bond Legislation, the Issuers have agreed to issue the Project Bonds and the Issuers have issued, sold and delivered the Project Bonds. The Project Bonds are issued pursuant to the Indentures and the Bond Legislation in the aggregate principal amount, bear interest, mature and are subject to redemption as stated in the Indentures and the Bond Legislation. The Owner hereby approves the terms of the Project Bonds and the Indentures, and agrees that, in the event of any inconsistency or conflict between this Agreement and the terms of the Indentures, the terms of the Indentures shall control.

The proceeds from the issuance of the Project Bonds shall be paid to the Agent and deposited as provided in this Agreement and the Indentures and used to pay or reimburse the Owner for the payment of the costs to construct the Project, to pay costs of issuance of the Project Bonds, to pay capitalized interest on the Project Bonds, and to fund the Bond Reserve Deposit.

Each of the Issuers and the Owner each hereby covenants that it will restrict the investment and reinvestment and the use of the proceeds of the Project Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time of delivery of and payment for Project Bonds or subsequent intentional acts, so that the Project Bonds will not constitute arbitrage bonds under Section 148 of the Code.

The Owner shall provide the Issuers with, and the Issuers may base their certifications as authorized by the Bond Legislation on, a certificate of an appropriate officer, employee, or agent of or consultant to the Owner for inclusion in the transcripts of proceedings for the Project Bonds, setting forth the reasonable expectations of the Owner on the date of delivery of and payment for the Project Bonds regarding the amount and use of the proceeds of the Project Bonds and the facts, estimates and circumstances on which those expectations are based.

Section 3.5. Disbursements of the Project Bonds Proceeds. All disbursements of the Project Bonds proceeds shall be made in accordance with the Indentures, this Agreement, and the Disbursing, Payment, and Collateral Agreement, the terms of which are hereby approved and agreed to by the Owner, the City, and the ESID.

Section 3.6. Bond Reserve Deposit. Concurrently with the issuance of the Project Bonds, the Bond Reserve Deposit under the Indentures shall be funded with proceeds of the Project Bonds.

Section 3.7. Construction and Completion of the Project. The Owner hereby covenants to cause to be constructed on the Property, the Project as described on **Exhibit B**. The Owner shall use its best efforts to cause the Project to be substantially completed on or prior to the date that is 30 months after the date of this Agreement. The Completion Date shall be evidenced to the ESID, the Issuers, and the Agent by a certificate of the Owner in the form attached to the Construction Services Agreement stating that the Project is substantially complete in conformance

with the terms of this Agreement. The Owner shall cause the completion of the Project on the Property regardless of whether the amounts made available to the Owner under this Agreement are sufficient to pay all of the costs of the Project. In the event the costs of the Project exceed the amounts made available to the Owner under this Agreement, the Owner nevertheless shall substantially complete the Project in accordance with the Plans and Specifications and shall pay any costs in excess of the amounts made available under this Agreement from any other sources available to the Owner.

Section 3.8. Disbursements for Project Costs. Disbursements from the Project Account for the payment of eligible costs of the Project shall be made by the Agent, subject to the conditions of this Agreement and of the Disbursing, Payment, and Collateral Agreement, only upon a Disbursement Request of the Authorized Owner Representative on the form attached to the Disbursing, Payment, and Collateral Agreement as **Exhibit A**. Each such Disbursement Request shall be consecutively numbered and shall identify the amount to be disbursed, for what costs of the Project those amounts are requested, and from which accounts those amounts are being requested to be disbursed. Each Disbursement Request shall be submitted and accompanied by such materials as are required under the Disbursing, Payment, and Collateral Agreement.

Section 3.9 Casualties and Takings. The Owner shall promptly notify the Issuers and the Agent if the Project is damaged or destroyed by fire, casualty, injury or any other cause (each such occurrence, a “Casualty”). Upon the occurrence of such Casualty, the Owner’s mortgage lender, if any, may have certain rights to direct the application of the insurance proceeds pursuant to the terms of mortgage lender’s agreement with the Owner; provided, that if the insurance proceeds are not used to restore the Property and the Project, insurance proceeds will be distributed first to Owner’s mortgage lender pursuant to its agreements with the Owner, and next to the Issuers for repayment of the outstanding balance of the Special Assessments and any related fees, and any excess proceeds will be paid to the Owner. Upon the occurrence of a Casualty, if no Person is a lender at the time of such Casualty, the insurance proceeds shall be applied, at the Owner’s election, to pay the costs of the restoration of the Project or to the repayment of the outstanding balance of the Special Assessments, in which case the Issuers shall remain obligated to make disbursements of up to the total amount of the proceeds of the Project Bonds made available under this Agreement and the Indentures, all in accordance with this Agreement.

In the event restoration of the Project or the Property is pursued, the Owner shall immediately proceed with the restoration of the Project in accordance with the Plans and Specifications. If, in the Issuers’ reasonable judgment, the proceeds of the Required Insurance Coverage are insufficient, when combined with the remaining proceeds of the Project Bonds and any lender funds, to complete the restoration, the Owner shall deposit with the Issuers such amounts as are necessary, in the Issuers’ reasonable judgment, to complete the restoration in accordance with the Plans and Specifications.

In the event any part of the Property or the Project shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (a “Taking”), the Issuers’ obligation to make disbursements under this Agreement shall be terminated unless the Property and the Project can be replaced and restored in a manner which will enable the

Project to be functionally and economically utilized and occupied in materially the same manner as originally intended. If the Property and the Project can be so restored and Owner's mortgage lender agrees to release funds related to such Taking for use in restoration, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications, and the Issuers shall release the funds for such purpose. If, in the Issuers' reasonable judgment, the Taking proceeds available to the Owner and the Issuers are insufficient, when combined with the remaining proceeds of the Project Bonds and any lender funds, to complete the restoration, the Owner shall deposit with the Issuers such amounts as are necessary, in the Issuers' reasonable judgment, to complete the restoration in accordance with the Plans and Specifications.

Each of the City and the Issuers hereby agree not to take the Property or the Project for public purposes by condemnation as a result of any action or proceedings in eminent domain or to accept the transfer of the Property or the Project in lieu of condemnation during the term of this Agreement.

Section 3.10 Rebate. Within five (5) days after the end of each Bond Year and within five (5) days after payment in full of all outstanding Project Bonds, the Owner shall cause the calculation by an independent entity satisfactory to the Issuers, or if requested by the Owner, the Issuers, at the expense of the Owner, will cause the calculation, of the amount of Excess Earnings as of the end of that Bond Year or the date of such payment and shall notify the Trustees of that amount. If the amount then on deposit in the Rebate Fund created under the respective Indentures is less than the amount of Excess Earnings (computed by taking into account the amount or amounts, if any, previously paid to the United States pursuant to the Indentures and this Section), the Owner shall, within five (5) days after the date of the aforesaid calculation, pay to the Agent for payment to the applicable Trustees for deposit in the applicable Rebate Fund an amount sufficient to cause the Rebate Fund to contain an amount equal to the Excess Earnings. The obligation of the Owner to make such payments shall remain in effect and be binding upon the Owner notwithstanding the release and discharge of this Agreement or the Indentures.

(End of Article III)

## ARTICLE IV

### Financing Payments

Section 4.1. Financing Payments. Upon the terms and conditions of this Agreement, the Issuers will finance a portion of the costs of the Project by the issuance of the Project Bonds. In consideration of that undertaking by the Issuers, the Owner shall pay to the Agent, as and when due and owing, all Financing Payments due on each Financing Payment Date as shown on Exhibit C attached to and incorporated into this Agreement. The payment of each Financing Payment shall constitute the direct payment in cash of all or the applicable portion of the corresponding installment of the Special Assessments as provided under Ohio Revised Code Section 323.071 and Section 2.4 of this Agreement. As further provided under Section 2.4 of this Agreement, the Agent and the Toledo Port Authority shall notify the City of the Agent's receipt of each such payment, and the City shall cancel all or the applicable portion of the corresponding installment of the Special Assessments in the records of the County Auditor.

If at any time any installments of the Special Assessments and any Delinquency Amounts are billed and collected by the County Treasurer and the County Auditor and remitted to the City, as described in Section 2.4 of this Agreement, the City shall pay to the Agent within 20 Business Days after receipt of such installments, but in no event later than May 1 and November 1 of each year, and solely from, all such Special Assessments and Delinquency Amounts actually received by the City.

All Financing Payments shall be paid to the Agent, who shall transfer the necessary amounts for Required Amounts and Administrative Amounts, including each semi-annual ESID Fee.

Notwithstanding anything in this Agreement to the contrary, the City's obligation under this Agreement to make Financing Payments shall be a special obligation of the City and the Financing Payments shall be required to be made solely from Special Assessments and Delinquency Amounts actually received by the City. The obligations of the City under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The obligations of the City under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City, and the Issuers does not have and shall not have any right to have taxes levied by the City for the payment of Financing Payments.

Upon the City's execution and delivery of this Agreement, all moneys received by or on behalf of the City from the collection of the Special Assessments and Delinquency Amounts shall be deemed to have been appropriated to pay the City's obligations under this Agreement. While this Agreement is in effect, the City shall take such further actions as may be necessary or appropriate to appropriate and maintain the moneys received from the collection of the Special Assessments and Delinquency Amounts in accordance with this Agreement. The City shall have no obligation to use or apply to the payment of Financing Payments any funds or revenues from any other source other than the Special Assessments and Delinquency Amounts.

To secure the transfer of the Special Assessments and any Delinquency Amounts by the City to the Issuers, and in accordance with the Special Assessment Act, the ESID hereby assigns, transfers, sets over, and shall pay all of its right, title, and interest in and to the Special Assessments and any Delinquency Amounts related to the ESID, less the semi-annual ESID Fee, actually received by or on behalf of the ESID to the Agent at the instruction of the Issuers. The Owner and the City agree and consent to that assignment.

Except for such interests as may hereafter arise pursuant to the Indentures, the City, the Owner, the ESID, and the Issuers each acknowledge that none of the City, the Owner, the ESID, or the Issuers has any interest in the Special Funds and any moneys deposited in the Special Funds shall be in the custody of and held by the respective Trustee in trust for the benefit of the Holders of the respective series of Bonds (as defined in the Indentures), in accordance with the respective Indentures.

The Owner further shall provide any and all statements, accountings, and information as may be reasonably requested by the Agent, the Trustees, or the Issuers in order to comply with the arbitrage and rebate requirements under the Code.

Section 4.2. Place of Payments. The Owner shall pay all Financing Payments, and the City shall pay all Special Assessments and Delinquency Amounts, if any, directly to the Agent at its corporate trust office or to such other as the Issuers may from time to time direct; provided, however, that while the Project Bonds shall remain outstanding and secured by the Indentures, the Issuers shall not direct the Owner or the City to pay Financing Payments to any Person other than the Agent.

Section 4.3. Obligations Unconditional. The obligation of the City to make Financing Payments, solely from Special Assessments and Delinquency Amounts, shall be absolute and unconditional, and the City shall make such payments without abatement, diminution, or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment, or counterclaim which the City may have or assert against the Issuers, the Agent, the Owner, the ESID, or any other Person. All of the obligations of the City under Sections 2.4, 3.1, 3.2, 4.1, and 4.2 of this Agreement are hereby established as duties specifically enjoined by law and resulting from an office, trust, or station upon the City within the meaning of Section 2731.01 of the Ohio Revised Code and shall be enforceable by mandamus.

Section 4.4. Assignment of Agreement and Revenues. To secure the payment of Bond Service Charges, the Issuers shall assign to the Trustees by their respective Indentures, their respective rights under and interests (but none of its obligations) in this Agreement (except for the Unassigned Authority Rights), and the Pledged Revenues. The City, the Owner, and the ESID hereby agree and consent to those assignments.

Section 4.5. Administrative Amounts. The City and the Owner hereby direct and authorize the Agent to pay to the Issuers, the ESID, and the Trustees, as Administrative Amounts, the portions of the Financing Payments shown as Administrative Amounts on **Exhibit C**; provided, however, that such payments shall be made only from Special Assessments and Delinquency Amounts remaining after the payment of Required Amounts. Except to the extent such amounts

are paid from the proceeds of the Project Bonds, in a manner consistent with Section 4.1 of this Agreement, the City and the Owner further hereby direct and authorize the Agent to pay to the Issuers, as Administrative Amounts under this Agreement, any and all costs and expenses in excess of such costs and expenses payable from the Scheduled Administrative Payments incurred or to be paid by the Issuers in connection with the issuance and delivery of the Project Bonds or otherwise related to actions taken by the Issuers under this Agreement or the Indentures, including the Administrative Amounts set forth on **Exhibit C**; provided, however, that such payments shall be made only from Special Assessments and Delinquency Amounts.

The City and the Owner hereby direct and authorize the Agent to pay to the ESID, the Trustees, any Registrars and any Paying Agents or Authenticating Agents, their reasonable fees, charges, and expenses for acting as such under the Indentures; provided, however, that such payments shall be made only from the Financing Payments and the Special Assessments and Delinquency Amounts.

(End of Article IV)

## ARTICLE V

### Additional Agreements And Covenants

#### Section 5.1. Right of Inspection and Signage.

(a) Inspection. Subject to reasonable security and safety regulations and upon reasonable notice to the Owner, the Issuers and their agents shall have the right during normal business hours to inspect the Project during the construction.

(b) Signage. Subject to all applicable City ordinances and procedures and any restrictions of Owner's mortgage lender, the Owner hereby agrees that the Issuers shall have the right to erect a project financing sign during construction of the Project at a prominent location on the Property, approved in advance by the Owner, in order to identify the Issuers' role in financing the Project.

#### Section 5.2. Indemnification by the Owner.

(a) The Owner (together with any permitted successors and assigns under this agreement, the "Indemnifying Parties") hereby release the Issuers, the City, the ESID, the Agent, the Trustees and their respective officers, directors, agents, and employees (the "Indemnified Parties"), from, and agrees that the Indemnified Parties shall not be liable for and, jointly and severally, indemnify the Indemnified Parties from, all liabilities, claims, damages, fines, penalties, costs, and expenses, including, but not limited to, out-of-pocket and incidental expenses and legal fees, imposed upon, incurred or asserted against the Indemnified Parties, on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the construction, installation, equipment and improvement maintenance, operation and use of the Project; (ii) any breach or default on the part of any Indemnifying Party in the performance of any covenant, obligation or agreement of that Indemnifying Party under this Agreement, any contract for the construction of the Project, or other Transaction Document to which that Indemnifying Party is a party, or arising from any act or failure to act by the Indemnifying Parties or any of the agents, contractors, servants, employees, or licensees of that Indemnifying Party resulting in material actual damages; (iii) the authorization, issuance, sale, trading, redemption, or servicing of the Project Bonds, and the provision of any information or certification furnished in connection therewith concerning the Project Bonds or the Project, by the Owner; (iv) the failure of the Owner to comply with any requirement of this Agreement or any other Transaction Document; (v) any failure of compliance by the Owner with the provisions of the Charter of the City, the Act, or any other applicable provision of law; (vi) any action taken or omitted to be taken by the Issuers, the City, the ESID, the Agent or the Trustees pursuant to the terms of this Agreement, the Indentures, any other Transaction Document or any other related instrument or document, or any action taken or omitted to be taken by the Issuers, the City, the ESID, the Agent or the Trustees at the written request of or with the written consent of



the Owner, including, without limitation, actions with respect to the levying and collection of the Special Assessments; (vii) any and all costs reasonably related to and reasonably incurred by the Issuers, the City, the ESID, the Agent or the Trustees in connection with its efforts to lawfully collect delinquent Special Assessments; and (viii) any claim, action or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), (iv), (v), (vi), or (vii) above. Notwithstanding the forgoing, Owner shall not release or indemnify an Indemnified Party as provided above to the extent that any liability, claim, cost, or expense arises out of or results directly from the gross negligence, willful misconduct, or with respect to any Indemnified Party other than the Trustees and their officers, directors, agents, and employees, a material breach of this Agreement by that Indemnified Party.

(b) The Indemnifying Parties agree to indemnify and hold the Indemnified Parties harmless from and against all liabilities, and all reasonable costs and expenses, including out-of-pocket expenses and attorneys' fees and expenses incurred by the Indemnified Parties as a result of the existence on, or release from, the Project, or the Property, of Hazardous Materials which in any way result from any act of omission or commission of the Owner, its related entities or any of its agents, employees, independent contractors, invitees, licensees, successors, assignees or tenants or arising out of any federal state or local environmental laws, regulations or ordinances. Notwithstanding the forgoing, Owner shall not release or indemnify the Indemnified Parties as provided above to the extent that any liability, claim, cost, or expense directly arises out of or directly results from the gross negligence, willful misconduct, or, with respect to any Indemnified Party other than the Trustee and its officers, directors, agents, and employees, a material breach of this Agreement by the Indemnified Parties.

The Indemnifying Parties further covenant and agree with the Indemnified Parties that the Indemnifying Parties nor their related entities, nor any of their agents, employees, independent contractors, invitees, licensees, successors, assignees, or tenants will store, release, or dispose of, or permit the storage, release, or disposal of any Hazardous Materials at the Project at any time from and after the effective date of this Agreement other than in accordance with applicable federal, state and local law and regulation. In the event that any party to this Agreement receives a notification or clean up requirement under 42 U.S.C. §9601 *et seq.* or other federal, state or local statute, ordinance, or regulation, relating to the Project, that party shall promptly notify the other parties to this Agreement of such receipt, together with a written statement of such party setting forth the details thereof and any action with respect thereto taken or proposed to be taken, to the extent of such party's knowledge. On receipt by the Indemnifying Parties of any such notification or clean up requirement, the Indemnifying Parties shall either proceed with appropriate diligence to comply with such notification or clean up requirement or shall commence and continue negotiation concerning or contest the liability of the Indemnifying Parties with respect to such notification or clean up requirement. The Indemnifying Parties agree to indemnify and hold the Indemnified Parties harmless from and against any and all liabilities and all reasonable costs and expenses, including reasonable attorneys' fees and expenses, arising out of any federal, state, or local environmental laws, regulations, or ordinances,

incurred by the Indemnified Parties as a result of any breach of this covenant or as a result of the presence of Hazardous Materials at the Project.

(c) The Indemnifying Parties agree to indemnify and hold the Trustees and their officers, directors, agents, and employees harmless against all liabilities, claims, costs and expenses, including out-of-pocket and incidental expenses and reasonable legal fees (including the allocated costs and expenses of in-house counsel and legal staff) (“Losses”) that may be imposed on, incurred by or asserted against the Trustees for following any instructions or other directions of the Owner upon which a Trustee is authorized to rely pursuant to the terms of the Indentures, this Agreement, or any other Transaction Document. In addition and not in limitation of the immediately preceding sentence, the Indemnifying Parties agree to indemnify and hold the Trustees and their officers, directors, agents, and employees harmless from and against any and all Losses as a result of action or inaction on the part of the Indemnifying Parties that may be imposed on, incurred by, or asserted against, the Trustees in connection with or arising out of the Trustees’ performance under the Agreement, the Indentures, or any other Transaction Document provided such Trustee has not acted (or failed to act) with negligence or engaged in willful misconduct.

(d) In case any claim or demand is at any time made, or action or proceeding is brought, against or otherwise involving the Issuers, the City, the ESID, the Agent, the Trustees, or any officer, director, agent, or employee of any such entity, in respect of which indemnity may be sought under this Agreement, the Person seeking indemnity promptly shall give notice of that action or proceeding to the Indemnifying Parties, upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Indemnifying Parties from any of their obligations under this Section unless, and only to the extent, that failure prejudices the defense of the action or proceeding by the Indemnifying Parties. An indemnified party may employ separate counsel and participate in the defense, but the fees and expenses of such counsel shall be paid by the indemnified party unless (a) the employment of such counsel has been specifically authorized by the Indemnifying Parties in writing, or (b) the Indemnifying Parties have failed to assume the defense and to employ counsel or (c) the named parties to any such action (including any impleaded parties) include both an indemnified party and the Indemnifying Parties and such indemnified party shall have been advised by its counsel that there may one or more legal defenses available to it which are different from or additional to those available to the Indemnifying Parties, in which case, if the indemnified party notifies the Indemnifying Parties in writing that it elects to employ separate counsel at the Indemnifying Parties’ expense, the Indemnifying Parties shall not have the right to assume the defense of such action on behalf of such indemnified party and the Indemnifying Parties shall be responsible for payment of the fees and expenses of such separate counsel. The Person seeking indemnity agrees to fully cooperate with the Indemnifying Parties to the extent such cooperation does not prejudice the position of such indemnified Person and lend the Indemnifying Parties such assistance as the Indemnifying Parties shall reasonably request in defense of any claim, demand, action or proceeding. The Indemnifying Parties shall not, nor shall any indemnified Person, be liable for any settlement made without its consent.

(e) Nothing in this Agreement is meant to release, extinguish, or otherwise alter or interfere with any rights which the Issuers, the City, the ESID, the Agent, or the Trustees may now or after the date of this Agreement have against the Owner, or any other Person for any environmental liabilities as a result of that Person's former, present, or future ownership, occupancy, or use of, or interest in, any real property included in or in the vicinity of the Project.

(f) The indemnification set forth above is intended to, and shall include, the indemnification of all affected officials, directors, officers, agents, and employees of the Issuers, the City, the ESID, the Agent, and the Trustees, respectively, and their successors and assigns. That indemnification is intended to, and shall be, enforceable to the full extent permitted by law and shall survive the termination of this Agreement, the resignation and removal of the Trustee, and the repayment of the Project Bonds.

Section 5.3. Litigation Notice; Management. The ESID and the Owner shall give the Issuers, the Agent, and the Trustees prompt notice, and the City shall use its best efforts to give the Issuers and the Trustee prompt notice, of any action, suit, or proceeding by or against the City, the ESID, or the Owner, at law or in equity, or before any governmental instrumentality or agency, or of any of the same which is threatened in writing, of which the City, the ESID or the Owner has notice, which, if adversely determined, would materially impair the right or ability of the City, the ESID, or the Owner to carry on the business which is contemplated in connection with the Project, or would materially and adversely affect any of their respective businesses, operations, properties, assets, or condition (financial or otherwise) (an "Action") together with a written statement describing the details of the Action and any actions taken or proposed to be taken by the City, the ESID, or the Owner in response to the Action.

Section 5.4. Assignment by Owner. This Agreement may not be assigned by the Owner without the written consent of the Issuers and the Trustees, except (i) to an Affiliate or (ii) to the transferee or resulting surviving entity in a transaction permitted by Section 5.5.

Section 5.5. Owner to Maintain Its Existence; Sales of Assets or Mergers. The Owner shall do all things necessary to preserve and keep in full force and effect its existence, rights and franchises, including its qualification as an organization described in Section 501(c)(3) of the Code. In particular, the Owner agrees that it shall not (a) sell, transfer or otherwise dispose of all, or substantially all, of its assets; (b) consolidate with or merge into any other entity; or (c) permit one or more other entities to consolidate with or merge into it. But the Owner may, any time after the Completion Date, without violating the first sentence of this Section, consolidate with, or merge into, another Person, permit one or more other Persons to consolidate or merge into it, or sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and dissolve, only if (a) the surviving, resulting, or transferee Person—whether the Owner or an entity other than the Owner—(i) assumes in writing all of the Owner's obligations under this Agreement and each of the Transaction Documents to which the Owner is a party and (ii) has a net worth, determined in accordance with generally accepted accounting principles consistently applied, at least equal to that of the Owner prior to dissolution, sale, consolidation, or merger; (b) that the consolidation, merger, sale, or transfer does not violate or result in the violation of any provision of any document to which the Owner is a party; and (c) the Owner shall have delivered an Opinion

of Bond Counsel (at its sole cost) to the Issuers and the Trustees that the proposed sale, transfer, or disposition will not adversely affect the exclusion of interest on the Project Bonds from the gross income of the Holders of the Project Bonds for purposes of federal income taxation. Upon consummation of a transaction permitted in this Section 5.5, the Owner, if it is not the surviving, resulting, or transferee entity, shall be released from its obligations under this Agreement and the Transaction Documents to which the Owner is a party.

To the extent permitted by law, the Owner agrees, for its benefit and the benefit of its successors and assigns, that it shall not enter into a written undertaking to pay delinquent taxes in installments under law, including but not limited to, Ohio Revised Code Section 323.31, where the effect of such entry would be to preclude the commencement, continuation, or resolution of foreclosure proceedings, or to otherwise delay the payment in full of any and all delinquent taxes, service payments in lieu of taxes, special assessments, including the Special Assessments, or other governmental charges on the Property.

Section 5.6. Financial Statements. The Owner shall deliver to the Issuers, (i) within 45 days of the end of each fiscal quarter, quarterly financial statements prepared by the Owner, and certified by its financial officer to be true, correct, and complete in all material respects to the best of its knowledge, subject to year-end adjustment, and (ii) annual financial statements of the Owner promptly upon their completion but not later than 120 days after the end of each of its fiscal years, certified by its financial officer to be true, correct, and complete in all material respects to the best of its knowledge, and (iii) such other financial information or reports as the Issuers shall reasonably request.

Section 5.7 OFAC. The Owner covenants and represents that (i) neither it nor any of its subsidiaries, affiliates, directors or officers are the target or subject of any sanctions enforced by the US Government, (including, the Office of Foreign Assets Control of the US Department of the Treasury (“**OFAC**”)), the United Nations Security Council, the European Union or HM Treasury (collectively “**Sanctions**”); and (ii) neither it nor any of its subsidiaries, affiliates, directors or officers will use any payments made pursuant to this Agreement (i) to fund or facilitate any prohibited activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any prohibited activities of or business with any country or territory that is the target or subject of Sanctions, or (iii) in any other manner that will result in a violation of Sanctions by any person.

Section 5.8 Owner Not to Adversely Affect Exclusion from Gross Income of Interest on Project Bonds. The Owner hereby represents that it has taken and caused to be taken, and covenants that it will take and cause to be taken, all actions that may be required of it, alone or in conjunction with the Issuers, for the interest on the Project Bonds to be and remain excluded from gross income of the Holders for federal income tax purposes, and represents that it has not taken or permitted to be taken on its behalf, and covenants that it will not take or permit to be taken on its behalf, any actions that would adversely affect such exclusion under the provisions of the Code.

(End of Article V)

## ARTICLE VI

### Financing Payment Abatement

Section 6.1. Financing Payment Abatement. If at any time Financing Payments have been paid to the Agent or the Trustees or the Agent or the Trustees otherwise hold sufficient moneys available for that purpose in an aggregate amount sufficient to cause the redemption or defeasance of all of the Project Bonds in accordance with the Indentures so that after such payment or defeasance none of the Project Bonds will be outstanding under the Indentures, then the Issuers shall direct the Trustees to cause that redemption or defeasance in accordance with the Indentures. Except as specifically provided in this Agreement to the contrary, no other action pursuant to any provision of this Agreement shall in any way abate the payment of Financing Payments.

(End of Article VI)

## ARTICLE VII

### Events Of Default And Remedies

Section 7.1. Events of Default. Each of the following shall be an Event of Default:

(a) The Owner shall fail to pay any Financing Payment in full when due, and such failure continues for five calendar days after written notice from the Agent.

(b) The City shall fail to transfer the Special Assessments to the Agent when due;

(c) The Owner shall fail to pay in full any installment of the Special Assessments and all other real property taxes, payments in lieu of taxes, special assessments, and other governmental charges due with the installment of the Special Assessments when due after taking into account any applicable extensions, provided, however, that if the effect of any extension would be that any installment of the Special Assessments is not paid to the City or to the Agent as and when set forth on Exhibit C to this Agreement, the Owner shall pay any amount of Special Assessments so affected directly to the Agent by not later than the applicable May 1 or November 1, as set forth on Exhibit C, after the full payment of any Financing Payments then due and payable out of amounts delivered directly by the Owner to the Agent as described above and amounts paid as Special Assessments, if necessary, any excess amounts previously paid as Special Assessments with respect to such scheduled payment and later paid to the City or to the Agent shall be returned to the Owner;

(d) The City shall fail to observe and perform any other agreement, term, or condition contained in this Agreement, and the continuation of such failure for a period of 30 days after notice shall have been given to the City by the Issuers or the Agent, or for such longer period as the Issuers may agree to in writing in any case not to exceed 180 days after the delivery of notice of the failure; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the City institutes curative action within the applicable period and diligently pursues that action to completion;

(e) The City shall: (A) (i) admit in writing its inability to pay its debts generally as they become due; (ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act; (iii) make a general assignment for the benefit of creditors outside the ordinary course of business; or (iv) consent to the appointment of a receiver for itself or of the whole or any substantial part of its property; or (B) file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state;

(f) Any representation or warranty made by the City or the Owner in this Agreement or any statement in any report, certificate, financial statement, in the

Transaction Documents or any other instrument furnished in connection with this Agreement or with the issuance of the Project Bonds shall at any time prove to have been false or misleading in any material respect when made or given, provided, however, that upon the material breach of a Party's representations or warranties under this Agreement, such Party shall have the right to cure such breach within 30 days of the receipt of notice, and, if so cured, such breach shall not constitute an Event of Default; or

(g) The Owner shall fail to observe and perform any other agreement, term, or condition contained in this Agreement or any other Transaction Document to which it is a party for a period of 30 days after notice shall have been given to the Owner by the Issuers or Agent, or for such longer period as the Issuers may agree to in writing in any case not to exceed 180 days after delivery of notice of the failure; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Owner institutes curative action within the applicable period and diligently pursues that action to completion.

(h) The Owner shall: (A) (i) admit in writing its inability to pay its debts generally as they become due; (ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act; (iii) make a general assignment for the benefit of creditors outside the ordinary course of business; or (iv) consent to the appointment of a receiver for itself or of the whole or any substantial part of its property; or (B) file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state

Notwithstanding the foregoing, if, by reason of Force Majeure, the City, or the Owner is unable to perform or observe any agreement, term, or condition of this Agreement which would give rise to an Event of Default under subsection (d) or (g) above, neither the City nor the Owner shall be deemed in default during the continuance of such inability. But the City or the Owner, as applicable, shall promptly give notice to the Agent and the Issuers of the existence of an event of Force Majeure and shall use its best reasonable efforts to remove the effects of the event of Force Majeure; provided that the settlement of strikes or other industrial disturbances shall be entirely within their discretion.

The term Force Majeure shall mean, without limitation, the following:

(i) acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction, or accident to facilities, machinery, transmission pipes, or canals; partial or entire failure of utilities; shortages of labor, materials, supplies, or transportation; or

(ii) any cause, circumstance or event not reasonably within the control of the City or Owner, as applicable; provided that inability to obtain necessary financing shall not constitute an event of Force Majeure.

The declaration of an Event of Default under subsection (d) or (g) above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation, or reorganization proceedings.

Section 7.2. Remedies on Default. Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

(a) Upon an Event of Default described in Section 7.1(c) only, the Issuers shall become entitled to receive any Delinquency Amounts actually received by the City.

(b) The Issuers may direct the Agent and the Trustees to refuse, or the Agent and the Trustees may refuse, to honor requests and orders for the disbursement of funds from the Project Account under the Indentures, provided that, the Issuers, the Agent, and the Trustee may only pursue such remedies against the party responsible for the particular Event of Default in question and such actions shall not prejudice a non-defaulting party;

(c) Subject to the Disbursing, Payment, and Collateral Agreement, the Trustees may exercise any or all or any combination of the remedies specified in the Indentures, provide that the Trustees may only pursue such remedies against the party responsible for the particular Event of Default in question and such actions shall not prejudice a non-defaulting party;

(d) The Issuers may have access to, inspect, examine and make copies of the books, records, accounts, and financial data of the City and the Owner pertaining to the Special Assessments, if any, any amounts required to be paid by the Owner under this Agreement, or the Project;

(e) Subject to the Disbursing, Payment, and Collateral Agreement, the Issuers or the Trustees may pursue all remedies available to them under the Special Assessment Agreement, provided that the Issuers or the Trustees may only pursue such remedies against the party responsible for the particular Event of Default in question and such actions shall not prejudice a non-defaulting party; or

(f) The Issuers or the Trustees may pursue all remedies now or after the date of this Agreement existing at law or in equity to collect all amounts then due and to become due under this Agreement to enforce the performance and observance of any other obligation or agreement of the City and the Owner under the Transaction Documents; provided that, the Issuers and the Trustee may only pursue such remedies against the party responsible for the particular Event of Default in question and such actions shall not prejudice a non-defaulting party.



Notwithstanding the foregoing, neither the Trustees nor the Issuers shall be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to the Issuers or the Trustee at no cost or expense to the Issuers or the Trustee. Any amounts collected as Financing Payments or applicable to Financing Payments and any other amounts collected pursuant to action taken under this Section shall be deposited and applied in accordance with the provisions of the Indentures.

Section 7.3. No Remedy Exclusive. No remedy conferred upon or reserved to the Issuers or the Trustee by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, or now or after the date of this Agreement existing at law, in equity, or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or shall be construed to be a waiver of that right or power, but any right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuers or Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made in this Agreement.

Section 7.4. Agreement to Pay Attorneys' Fees and Expenses. If an Event of Default by the Owner occurs and the Issuers, the City, the ESID, the Agent, or the Trustees incur expenses, including attorneys' fees and expenses, in connection with the enforcement of this Agreement against the Owner or the collection of sums due from the Owner under this Agreement, the Owner shall reimburse the Issuers, the City, the ESID, the Agent, and the Trustees, as applicable, for the reasonable expenses so incurred upon demand in the manner provided for Administrative Amounts. If any such expenses are not so reimbursed, the amount of the expenses, together with interest on that amount from the date of demand for payment at the Interest Rate for Advances, to the extent permitted by law, shall constitute indebtedness secured by this Agreement and in any action brought to collect that indebtedness or to enforce this Agreement, the Issuers, the City, the ESID, or the Trustee, as applicable, shall be entitled to seek the recovery of those expenses in such action except as limited by law or judicial order or decision entered in such proceedings.

Section 7.5. No Waiver. No failure by the Issuers, the Agent, or the Trustees to insist upon the strict performance by the City or the Owner of any provision of this Agreement shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the City or the Owner to observe or comply with any provision of this Agreement.

Section 7.6. Notice of Default. The City and the Owner shall notify the Trustee and the Issuers promptly if either of them becomes aware of the occurrence of any Event of Default under this Agreement or of any fact, condition, or event which, with the giving of notice or passage of time or both, would become an Event of Default.

(End of Article VII)

## ARTICLE VIII

### Miscellaneous

Section 8.1. Term of Agreement. This Agreement shall be and remain in full force and effect from the Closing Date until (i) such time as all sums payable under this Agreement shall have been paid (except for obligations of the City and the Owner under Sections 5.2 and 5.3 of this Agreement, and the obligations of the Owner under Sections 2.4, 2.5 and 7.4 of this Agreement, which shall survive any termination of this Agreement), or (ii) the payment in full of the Special Assessments, whichever shall come earlier. Notwithstanding the foregoing, provided that the Project Bonds shall no longer be outstanding and all other sums under this Agreement have been paid, the City and the Issuer, may by written instrument agree to terminate this Agreement except for Sections 2.4, 2.5, 5.2, 5.3, and 7.4 of this Agreement, provided that the Issuers and the City shall have complied with the provisions of Section 8.8 of this Agreement.

Section 8.2. Notices. All notices, certificates, requests, or other communications under this Agreement shall be in writing and shall be deemed to be sufficiently given when mailed by national overnight delivery service, registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request, or other communication given under this Agreement to any of the Cooperative Parties shall also be given to each of the others and to the Trustee. Any of the Cooperative Parties, by notice given under this Section, may designate any further or different addresses to which subsequent notices, certificates, requests, or other communications shall be sent. If, because of the suspension of overnight delivery, delivery of certified or registered mail or for any other reason, notice, certificates, or requests or other communications are unable to be given by the required class of mail, any notice required to be mailed by the provisions of this Agreement shall be given in such other manner as in the judgment of the Issuers shall most effectively approximate mailing, and the giving of that notice in that manner for all purposes of this Agreement shall be deemed to be in compliance with the requirement for the mailing. Except as otherwise provided in this Agreement, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

Section 8.3. Extent of Covenants; No Personal Liability. All covenants, obligations, and agreements of the Issuers, the ESID, and the City contained in this Agreement and any other Transaction Documents to which they are a party shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation, or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent, or employee of the Issuers, the ESID, the Owner, the City, the Legislative Authority, the board of directors of the ESID, or the Council of the City, in other than his or her official capacity.

Section 8.4. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding in accordance with its terms upon, the Issuers, the City, the ESID, the Owner, and their respective permitted successors and assigns; provided that this Agreement may not be assigned by the City. This Agreement may be enforced only by the parties, their assignees, and others who may, by law, stand in their respective places.

Section 8.5. Amendments and Supplements. Except as otherwise expressly provided in this Agreement or the Indentures, subsequent to the issuance of the Project Bonds and prior to all conditions provided for in the Indentures for release having been met, this Agreement may not be effectively amended, changed, modified, altered, or terminated except in accordance with the provisions of Article XI of the Basic Indenture. Any attempt to amend, change, modify, alter, or terminate this Agreement except as provided above shall be void.

Section 8.6. Execution Counterparts. This Agreement may be executed in counterpart and in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 8.7. Severability. If any provision of this Agreement, or any covenant, obligation, or agreement contained in this Agreement is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation, or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained in this Agreement. That invalidity or unenforceability shall not affect any valid and enforceable application of the provision, covenant, obligation, or agreement, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 8.8. Extent of Obligation.

(a) The obligations of the Issuers under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The obligations of the Issuers under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the Issuers, and neither the City, the Owner, the ESID, the Agent, the Trustees, the Holders (as defined in the Indentures) of the Project Bonds, or any other party shall have any right to have taxes levied by the Issuers for the payment of its obligations under this Agreement.

(b) The obligations of the City under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The obligations of the City under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City, and neither the Issuers, the Owner, the ESID, the Agent, the Trustees, the Holders (as defined in the Indentures) of the Project Bonds, or any other party shall have any right to have taxes levied by the City for the payment of its obligations under this Agreement.

(c) The obligations of the City under this Agreement are hereby established as duties specifically enjoined by law and resulting from an office, trust, or station upon the City within the meaning of Ohio Revised Code Section 2731.01 and shall be enforceable by mandamus, but only by the express beneficiaries of that covenant.

Section 8.9. Continuing Disclosure. The City and the Owner each agrees to provide to the Issuers such information at the request of Issuers as shall be sufficient to enable the Issuers to comply with its respective continuing disclosure obligations under the Indentures and the Continuing Disclosure Agreements.

Section 8.10. Limitation of Rights. With the exception of rights conferred expressly in this Agreement, nothing expressed or mentioned in or to be implied from this Agreement or the Project Bonds is intended or shall be construed to give to any Person other than the Cooperative Parties and the Holders of the Project Bonds any legal or equitable right, remedy, power, or claim under or with respect to this Agreement or any covenants, agreements, conditions, and provisions contained in this Agreement. This Agreement and all of those covenants, agreements, conditions, and provisions are intended to be, and are, for the sole and exclusive benefit of the Cooperative Parties and the Holders of the Project Bonds, as provided in this Agreement.

Section 8.11. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

Section 8.12. The Trustees. To the extent that the Trustees acts or omits to act under this Agreement, the Trustees shall be afforded all of the rights, protections, immunities, and indemnities under this Agreement that are accorded to them under their respective Indentures.

(End of Article VIII)

IN WITNESS WHEREOF, the Cooperative Parties each have caused this Agreement to be duly executed in their respective names, all as of the date first written above.

THE CITY OF TOLEDO, OHIO, as the  
City

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TOLEDO-LUCAS COUNTY PORT  
AUTHORITY, as the Toledo Port and an Issuer

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

Name: Thomas J. Winston

Title: President & CEO

CLEVELAND-CUYAHOGA COUNTY PORT  
AUTHORITY, as the Cleveland Port and an Issuer

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

Name: William D. Friedman

Title: President and CEO

COLUMBUS-FRANKLIN COUNTY FINANCE  
AUTHORITY, as the Finance Authority and an  
Issuer

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

Name: Patty Huddle

Title: President



THE TOLEDO MUSEUM OF ART,  
an Ohio nonprofit corporation, as the Owner

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TOLEDO, OREGON, MAUMEE, NORTHWOOD, PERRYSBURG,  
SYLVANIA, WHITEHOUSE, TOWNSHIP OF MONCLOVA, TOWNSHIP  
OF SPRINGFIELD, TOWNSHIP OF SWANTON, TOWNSHIP OF  
SYLVANIA, OHIO ADVANCED ENERGY IMPROVEMENT  
CORPORATION d/b/a:

NORTHWEST OHIO ADVANCED ENERGY  
IMPROVEMENT DISTRICT, as the ESID

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TOLEDO PORT'S FISCAL OFFICER'S CERTIFICATE

The undersigned, Assistant Secretary and Fiscal Officer of the Toledo-Lucas County Port Authority, hereby certifies that the moneys required to meet the obligations of the Toledo Port during the year 2024 under the Agreement have been lawfully appropriated by the Legislative Authority of the Toledo Port for such purposes and are in the treasury of the Toledo Port 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, Ohio Revised Code.

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Assistant Secretary and Fiscal Officer  
Toledo-Lucas County Port Authority

Dated: \_\_\_\_\_, 2024

CLEVELAND PORT'S FISCAL OFFICER'S CERTIFICATE

The undersigned, Secretary and Fiscal Officer of the Cleveland-Cuyahoga County Port Authority, hereby certifies that the moneys required to meet the obligations of the Cleveland Port during the year 2024 under the Agreement have been lawfully appropriated by the Legislative Authority of the Cleveland Port for such purposes and are in the treasury of the Cleveland Port 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, Ohio Revised Code.

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Assistant Secretary and Fiscal Officer  
Cleveland-Cuyahoga County Port Authority

Dated: \_\_\_\_\_, 2024

COLUMBUS FINANCE AUTHORITY'S FISCAL OFFICER'S CERTIFICATE

The undersigned, assistant secretary-treasurer and fiscal officer of the Columbus-Franklin County Finance Authority, hereby certifies that the moneys required to meet the obligations of the Columbus Finance Authority during the year 2024 under the foregoing Agreement have been lawfully appropriated by the Legislative Authority of the Columbus Finance Authority for such purposes and are in the treasury of the Columbus Finance Authority 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, Ohio Revised Code.

Dated: \_\_\_\_\_, 2024

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Fiscal Officer and Assistant Secretary-Treasurer  
Columbus-Franklin County Finance Authority

CITY FISCAL OFFICER'S CERTIFICATE

The undersigned, fiscal officer of the City of Toledo, Ohio, hereby certifies that the City has established a special assessment fund, into which the Special Assessments (as that term is defined in the foregoing Agreement), if any, actually received by the City shall be deposited, free from any encumbrances. The Special Assessments, if any, represent other revenues in process of collection to the credit of the appropriate fund. To the extent Special Assessments are actually received by the City, the City shall use the moneys deposited in such special assessment fund to meet its obligations under the foregoing Agreement. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

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Fiscal Officer  
City of Toledo, Ohio

Dated: \_\_\_\_\_, 2024

**EXHIBIT A**

**Property**

The Property subject to this Agreement is located at the commonly used address of 2445 Monroe Street, Toledo, Ohio and has Lucas County Auditor Parcel ID No. 1405574, and the following legal description:

[Legal Description to Be Added]

## **EXHIBIT B**

### **Project**

The Project consists of the acquisition, construction, installation, equipping, and improvement of HVAC system replacements and upgrades and other related energy efficiency improvements, consisting of special energy improvement projects as defined under Ohio Revised Code Section 1710.01(I) and “port authority facilities” as described in Ohio Revised Code Sections 4582.01 and 4582.21, to be incorporated into the buildings and improvements generally consisting of the Owner’s approximately 328,568 square-foot, two-level main building and located on the Property described in **Exhibit A** to this Agreement.



**EXHIBIT C**

**Schedule of Financing Payments**

[To Be Added]