

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (the "Agreement") is entered into as of the ___ day of _____, 20__ between _____ (the "Host Authority"), and _____ (the "Contracting Authority"), each a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State of Ohio.

RECITALS:

A. The Contracting Authority and the Host Authority are each port authorities and political subdivisions and bodies corporate and politic created under applicable sections of Chapter 4582, Ohio Revised Code (the "Act").

B. The Contracting Authority and the Ohio Council of Port Authorities, Inc. (the "Port Council") have entered into a Project Development Agreement dated as of _____, 20__ (the "Project Development Agreement"), under which the Contracting Authority has agreed to undertake the design, acquisition, construction, improvement and/or equipping ("Provision") of the Project, as defined and more particularly described in the Project Development Agreement (the "Project") on behalf of the Port Council and the State of Ohio, Department of Transportation ("ODOT") within the jurisdiction boundaries of the Host Authority. The Project will constitute "port authority facilities," as defined in the Act, within the Host Authority's jurisdiction.

C. The Contracting Authority has particular experience and expertise in undertaking projects similar to the Project, and the Host Authority wishes to utilize that experience and expertise of the Contracting Authority for Provision of the Project.

D. The Host Authority and the Contracting Authority wish to enter into this Agreement pursuant to, and as authorized under, the Act to permit the Contracting Authority to cooperate with the Host Authority in Provision of the Project within the jurisdiction of the Host Authority.

NOW, THEREFORE, in consideration of the forgoing recitals, and for other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Host Authority and the Contracting Authority hereby agree as follow:

Section 1. Cooperative Agreement.

(a) The Contracting Authority and the Host Authority agree to cooperate with one another to permit and assist the Contracting Authority to undertake Provision of the Project in accordance with the terms and conditions of the Project Development Agreement, which Project, the Contracting Authority agrees, shall constitute "port authority facilities" as defined in the Act.

(b) Except as otherwise specifically provided on Schedule A hereto,

- (i) the Contracting Authority agrees that the Host Authority shall not be responsible for any aspect of Provision of the Project under the Project Development Agreement, and
- (ii) the agreement of the Host Authority and the Contracting Authority to cooperate with one another in Provision of the Project by the Contracting Authority within the jurisdiction of the Host Authority is limited solely to that purpose.

(c) Nothing in this Agreement, expressed or implied, shall extend to any cooperative arrangement between the Host Authority and the Contracting Authority with respect to matters other than Provision of the Project.

Section 2. Administrative Fees.

(a) In consideration of the undertakings of the parties under this Agreement, the Contracting Authority agrees to pay to the Host Authority an administrative fee (the "Administrative Fee") equal to _____ percent (___%) of the "Fee" as defined in, and to be paid to the Contracting Authority by the Port Council under, the Project Development Agreement.

(b) The Contracting Authority agrees to remit, or cause to be remitted, the Administrative Fee to the Host Authority within fifteen (15) business days of the actual receipt of the Fee by the Contracting Authority from the Port Council.

Section 3. Term.

(a) This Agreement shall commence on the date hereof and shall terminate on the Transfer Date, as defined in the Project Development Agreement.

(b) The Host Authority acknowledges that the obligation of the Contracting Authority to pay the Administrative Fee under this Agreement is subject to the appropriation of sufficient funds by the General Assembly of the State. If at any time sufficient funds are not appropriated to continue funding the Provision of the Project under the Project Development Agreement, this Agreement will terminate on the date the available appropriation expires without any further obligation of the Contracting Authority.

Section 4. Miscellaneous Provisions.

(a) Any notice, consent, approval, election or waiver required or permitted to be given under this Agreement shall be in writing and sent to a party by registered or certified mail, return receipt requested, or by courier, express or overnight delivery, and by confirmed e-mail, at the following address:

as to the Host Authority:

Attn: _____

as to the Contracting Authority:

Attn: _____

The date such notice shall be deemed to have been given shall be by business day of receipt if received during business hours, the first business day after the business day of receipt if received after business hours on the preceding business day, the first business day after the date sent by courier, express or overnight (“next day delivery”) service.

(b) Neither this Agreement nor any rights, duties or obligations described in it may be assigned by either party without the prior express written consent of the other party; provided, however, that the Host Authority agrees that the Contracting Authority may hire or contract with an agents or contractors in connection with the Provision of the Project.

(c) Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or joint venture between the Parties.

(d) Modification to this Agreement may only be accomplished by written amendment, signed by both parties, and upon mutual agreement.

(e) This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

(f) In executing this Agreement, each party represents and warrants to the other that that the person executing and delivering this Agreement on its behalf has been duly authorized by its governing board.

(g) This Agreement shall be construed, interpreted, enforced, and the rights of the parties determined, in accordance with the laws of the State of Ohio.

(signatures on following page)

IN WITNESS WHEREOF, this Agreement has been executed on behalf of each party hereto by a duly authorized officer as of the date first written above.

Host Authority:

By _____

Name: _____

Title: _____

Contracting Authority:

By _____

Name: _____

Title: _____

FISCAL OFFICER'S CERTIFICATE
Host Authority

The undersigned Fiscal Officer of the Host Authority hereby certifies that the moneys required to meet the obligations of the Host Authority during the year 20__ under this Cooperative Agreement have been lawfully appropriated by the board of directors of the Host Authority for such purpose and are in the treasury of the Host 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.

Fiscal Officer

Dated: _____

FISCAL OFFICER'S CERTIFICATE
Contracting Port Authority

The undersigned Fiscal Officer of the Contracting Authority hereby certifies that the moneys required to meet the obligations of the Contracting Authority during the year 20__ under this Cooperative Agreement have been lawfully appropriated by the board of directors of the Contracting Authority for such purpose and are in the treasury of the Contracting 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.

Fiscal Officer

Dated: _____

Schedule A

Additional Duties of Host Port