

PROJECT DEVELOPMENT AGREEMENT

This **PROJECT DEVELOPMENT AGREEMENT** (the "Agreement") is entered into as of the ___ day of _____, 20__ by and between the **OHIO COUNCIL OF PORT AUTHORITIES, INC.**, an Ohio nonprofit corporation (the "Port Council") and _____, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the Authority"). Capitalized words and terms shall have the meanings assigned to them in Section I hereof.

RECITALS:

A. The Port Council has entered into the Master Development Agreement with ODOT, acting by and through the Director, pursuant to which ODOT is using the Port Council to facilitate Provision, by one or more port authorities created under the Act, of ODOT Facilities in the State identified by ODOT, all as more particularly described on Master Development Agreement.

B. The Port Council issued the Request for Qualifications to determine which of the port authorities in the State are qualified to execute Provision of an ODOT Facility, and the Authority has been determined by the Port Council to be so qualified pursuant to its Response.

C. Pursuant to ORC Section 5501.312(A), the Port Council, on behalf of the Director, is entering into this Agreement with the Authority for Provision of the Project, which Project shall be a "port authority facility," as defined in the Act, up to and until it is transferred to ODOT in accordance with the terms of this Agreement.

D. To facilitate Provision of the Project, the Port Council and the Authority are entering into this Agreement.

NOW THEREFORE, for and in consideration of the forgoing recitals and of the mutual agreement set forth below, the Parties understand and agree as follows:

I. DEFINITIONS

A. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section I.B hereof shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent.

B. Definitions. As used herein:

"Act" means the provisions of ORC Chapter 4582 applicable to the Authority.

"Agreed Upon Delivery Method" means the agreed delivery method for Provision of the Project, as set forth on Exhibit A hereto.

“Agreement” means this Project Development Agreement, as the same may be amended or supplemented from time to time.

“Authorized Authority Representative” means the Person or Persons who are authorized to execute Disbursement Requests on behalf of the Authority designated in a written certificate of the Authority delivered from time to time to the Port Council and ODOT and signed by an appropriate officer of the Authority.

“Change Order” means a change order that is approved by ODOT pursuant to Section V.D.4 hereof.

“Claim” means any and all rights, claims, interests, and/or rights of action, whether contingent or vested, of the Authority arising out of or related to any contract entered into for Provision of the Project.

“Completion Date” means the date established for Substantial Completion of Provision of the Project, as set forth on Exhibit A hereto.

“Construction Administrator” means the administrator retained by the Authority pursuant to this Agreement to provide administration for the supervision and inspection of Provision of the Project.

“Construction Contract” means the Construction Contract entered into by the Authority with the Contractor for Provision of the Project pursuant to Section V.E.1 hereof.

“Construction Inspector” means any Construction Inspector retained by the Port Council pursuant to Section VI.H hereof.

“Construction Qualification Requests” means the Request for Qualifications and/or Request for Proposals issued by the Authority for Provision of the Project.

“Contractor” means contractor or construction manager retained by the Authority under the Construction Contract.

“Director” means the Director of Transportation of the State.

“Disbursement” means a disbursement of Funds to pay costs of the Project pursuant to this Agreement.

“Disbursement Request” means a request for a Disbursement delivered by the Authority to the Port Council and ODOT on the form of Request for Disbursement attached as Exhibit B hereto.

“Event of Default” means such term as defined in Section VIII.A hereof.

“Fee” means the Fee to be paid by the Port Council to the Authority pursuant to Section VII of this Agreement.

“Funds” means the moneys made available by ODOT to the Port Council pursuant to the Master Development Agreement to pay the Maximum Price for Provision of the Project by the Authority under this Agreement.

“Governing Board” means, as to the Port Council, its members, and as to the Authority, its board of directors.

“Maximum Price” means the not-to-exceed maximum price established by ODOT for Provision of the Project as set forth on Exhibit A hereto, subject to adjustment as provided in Section V.C hereof.

“Master Development Agreement” means the Master Development Agreement entered into between ODOT and the Port Council in connection with Provision of the ODOT Facilities, as the same may be amended or supplemented from time to time.

“Notice Address” means:

as to the Port Council: Ohio Council of Port Authorities, Inc.

Attn: President

with a copy to: Ohio Department of Transportation
1980 West Broad Street
Columbus Ohio 43223
Attn: Statewide Facilities Operations

and a copy to: [ODOD District Office Address]

Attn:

as to the Authority: [Authority Address]

Attn:

or such additional or different address, notice of which is given under Section X hereof.

“ODOT” means the State of Ohio, Department of Transportation.

“ODOT Facilities” means those facilities identified by ODOT to be constructed on its behalf pursuant to the Master Development Agreement.

“ORC” means the Ohio Revised Code.

“Parties” means the parties to this Agreement.

“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 plans and specifications of the schematic design of the Project approved ODOT and delivered to the Authority by the Port Council pursuant to this Agreement, as the same may be revised by an changes approved by ODOT pursuant to Section V.D.2 hereof or any Change Orders.

“Project” means the ODOT Facility to be constructed by the Authority pursuant to the Plans and Specifications and this Agreement, as more particularly described on Exhibit A hereto.

“Provision” means the design, acquisition, construction, improvement and/or equipping of the Project, including without limitation construction administration, competitive bidding, bidder qualification, and construction inspection thereof, all pursuant to the terms of this Agreement.

“Request for Qualification” means the Request for Qualifications issued by the Port Council for Provision of ODOT Facilities pursuant to the Master Development Agreement.

“Response” means the Authority’s Response to the Request for Qualification, a copy of which is attached as Exhibit C hereto.

“Retainage” means such term as defined in Section VI.G hereof.

“Retainage Percentage” means that percentage amount of the Retainage set forth on Exhibit A hereto.

“Substantial Completion” means the stage in the progress of the work when the Project or designated portion thereof is sufficiently complete in accordance with the Plans and Specifications so that ODOT could occupy or use the Project for its intended use; provided, the Completion Date may be extended by (i) any delays caused by ODOT, (ii) unforeseen site conditions, and (iii) any matter outside of the Authority’s reasonable control, including, but not limited to, adverse weather conditions, strikes, lock-outs, embargoes, unavailability of labor or materials,

wars, insurrections, rebellions, civil disorder, declaration of national emergencies or acts of God.

“State” means the State of Ohio.

“Total Cost of the Project” means any and all costs incurred by the Authority in connection with the negotiation of this Agreement, the acquisition of any real estate in connection with the Project, the design of the Project, and the construction of the Project, including, but not limited to, (i) payments to general contractors, construction managers, subcontractors, consultants, advisors and/or agents, (ii) costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction, (iii) costs of materials described in the preceding clause in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage, (iv) costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the Project and fully consumed in the performance of the work on the Project, (v) rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers which are provided by the Contractor in connection with the Project, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof, (vi) costs of removal of debris from the site, (vii) costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses at the site office, (viii) that portion directly attributable to this Agreement of premiums for insurance and bonds, (ix) sales, use or similar taxes imposed by a governmental authority, which are related to the work and for which the Authority is liable, if any, (x) fees and assessments for building permits, any other required permits, and inspections, (xii) all design costs and architects’ fees, and (xiii) any additions made to the Total Project Costs for each Change Order that increases such costs.

“Transfer Date” means the date of transfer and conveyance of the Project by the Authority to ODOT, which shall be one year after the Completion Date.

“Warranties” means all warranties, guaranties and/or other rights received from any contractors, subcontractors and manufacturers on connection with Provision of the Project.

- C. Interpretation. Any reference herein to the Port Council of the 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, 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 either Party under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa; the terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Agreement; and the term "hereafter" means after, and the term "heretofore" means before, the date of this Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

- D. 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 Sections, subsections, paragraphs, subparagraphs or clauses hereof.

II. REPRESENTATIONS AND WARRANTIES

- A. Representations and Warranties of Authority. The Authority represents and warrants to the Port Council that: (a) it is a port authority and political subdivision and body corporate and politic 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 it which would impair its ability to carry out its obligations contained in this Agreement; (c) it is legally empowered to enter into and perform the transactions contemplated by this Agreement; (d) the execution, delivery and performance of this Agreement do not and will not violate or conflict with any provision of law applicable to it, and do not, and will not, conflict with or result in a default under any agreement or instrument to which it is a party or by which it is bound which would have an adverse effect on its ability to perform its obligations under this Agreement, including without limitation the resolution and/or ordinances establishing its existence under the Act and its rules and bylaws; (e) its Governing Board has duly authorized the execution, delivery and performance of this Agreement; (f) this Agreement, when executed and delivered by it, will constitute its legal, valid and binding obligations, enforceable against it in accordance with the respective terms thereof, except as enforceability may be limited by the application of bankruptcy, insolvency, reorganization, moratorium, liquidation, fraudulent conveyance and other similar laws and equitable principles now or hereafter in effect or enacted respecting creditors' rights or remedies generally; (g) it has duly accomplished all conditions necessary to be accomplished by it to perform the terms and conditions of this Agreement; (h) it will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any public body that becomes a legal successor to it; and (i) it has received, reviewed and understands the terms and conditions of the Master Development Agreement.

- B. Representations and Warranties of Port Council. The Port Council represents and warrants to the Authority that: (a) it is a nonprofit corporation duly organized and in good standing 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 it which would impair its ability to carry out its obligations contained in this Agreement; (c) it is legally empowered to enter into and perform the transactions contemplated by this Agreement; (d) the execution, delivery and performance of this Agreement do not and will not violate or conflict with any provision of law applicable to it, and do not, and will not, conflict with or result in a default under any agreement or instrument to which it is a party or by which it is bound which would have an adverse effect on its ability to perform its obligations under this Agreement, including without limitation its articles of incorporation or its bylaws; (e) its Governing Board has duly authorized the execution, delivery and performance of this Agreement; (f) this Agreement, when executed and delivered by it, will constitute its legal, valid and binding obligations, enforceable against it in accordance with the respective terms thereof, except as enforceability may be limited by the application of bankruptcy, insolvency, reorganization, moratorium, liquidation, fraudulent conveyance and other similar laws and equitable principles now or hereafter in effect or enacted respecting creditors' rights or remedies generally; (g) it has duly accomplished all conditions necessary to be accomplished by it to perform the terms and conditions of this Agreement; and (h) it will do all things in its power in order to maintain its corporate existence or assure the assumption of its obligations under this Agreement by any corporation that becomes a legal successor to it.

III. PROJECT TERMS AND CONDITIONS

- A. Maximum Price; Total Cost of the Project. The price for the Provision of the Project shall be the Maximum Price. The Total Cost of the Project shall not exceed the Maximum Price.
- B. Agreed Upon Project Delivery Method. The delivery method for the Project shall be the Agreed Upon Project Delivery Method.
- C. Plans and Specification. Provision of the Project shall be made in accordance with the Plans and Specifications.
- D. Disbursements. Disbursement of Funds to pay the Total Cost of the Project shall be made in accordance with Section VI hereof. Disbursements shall be made solely from the Funds.
- E. Acquisition of Interest in Real Estate. At the request of ODOT, the Authority will acquire such interests in real estate as shall be necessary to Provision of the Project upon such terms and conditions as the Authority, the Port Council and ODOT shall mutually agree. The cost of acquisition of such interests in real estate, including any transaction costs, shall be included in the Total Cost of the Project.

- F. Transfer of Project to ODOT. Subject to the terms and conditions of this Agreement and the Master Development Agreement, on the Transfer Date the Authority will transfer and convey all of the Authority's right, title and interest in and to the Project to ODOT. Any cost of such transfer and conveyance shall be included in the Total Cost of the Project.

IV. RESPONSIBILITIES OF PORT COUNCIL

- A. The Port Council agrees to do and undertake the following:
1. Assist the Authority with the development of the Requests in accordance with the bidding authority vested in the Authority under the Act.
 2. From time to time upon the request of ODOT, make available to ODOT for inspection or reproduction all records, books and documents of every kind and description in the Port Council's possession or control which relate to the performance of its duties under this Agreement or the Master Development Agreement.
 3. Designate an agent of the Port Council who is empowered to approve, deny, certify and effectuate all Disbursements.
 4. Pay to the Authority the Total Cost of the Project and compensate the Authority in an amount the Fee, each in accordance with the terms and conditions of this Agreement; provided, the Total Cost of the Project shall not exceed the Maximum Price.
 5. Timely and completely respond to requests from the Authority, including, but not limited to providing comments and/or approval on the Plans and Specifications within five (5) business days of receipt from the Port Authority.

V. RESPONSIBILITIES OF AUTHORITY

- A. Provision of the Project.
1. The Authority agrees to undertake Provision of the Project on behalf of the Port Council and ODOT in accordance with the Plans and Specifications and the terms, conditions and provisions of this Agreement.
 2. In the Provision of the Project, the Authority will assure compliance with all commitments made as part of the Project's environmental clearance and/or permit requirements.
 3. In the performance of the Authority's obligation under this Agreement, the Authority will comply with all Best Management Practices (BMPs) to be utilized for post construction storm water management in accordance with the Ohio EPA National Pollutant Discharge Elimination System (NPDES)

Construction General Permit; provided, if no BMPs are proposed, the Authority will obtain and deliver to the Port Council and ODOT a letter stating concurrence from the Ohio EPA.

4. The Authority will restore in a good and workmanlike manner any portion of the access road to the Project site which may be destroyed or disturbed by the Authority's activities which are outside the scope of this Agreement.
5. The Authority will undertake Provision of the Project in accordance to industry standards and in a workmanlike manner.
6. The Authority may retain a Construction Administrator to represent the Authority in connection the Provision of the Project. The fees and expenses of any Construction Administrator shall be paid by the Authority from the Fee received by the Authority under this Agreement. The Authority will require any Construction Administrator retained by it to certify to the Authority, the Port Council and ODOT that such Construction Administrator does not have a conflict of interest with the Contractor.
7. In accordance with the Master Development Agreement and notwithstanding anything in this Agreement to the contrary, if ODOT and the Port Council reasonably determine that the Project cannot be constructed, or would be materially more difficult to construct, due to adverse site conditions, including but not limited to, title issues, easements, encumbrances or other adverse conditions, ODOT shall have the right to direct the Port Council to terminate this Agreement. In the event of such termination, ODOT has agreed in the Master Development Agreement to reimburse the Port Council and the Authority for all out-of-pocket expenses incurred by the Port Council and Authority in connection with the negotiation of this Agreement and the Provision of the Project.

B. Requests.

1. The Authority will develop, with the assistance of the Port Council, the Requests in accordance with the bidding authority vested in the Authority under the Act. The Authority will provide to ODOT all Requests for prior approval by ODOT and acknowledges that ODOT shall have final approval of all Requests, which approval shall be provided by ODOT to the Port Council and the Authority within seven (7) days after the close of each Request.
2. The Authority will complete the Requests process as soon as practicable for the Agreed Upon Project Delivery Method for the Project in accordance with the bidding authority vested in the Authority under the Act.

C. Maximum Price.

1. Within five (5) days of the conclusion of the Requests process for the Agreed Upon Project Delivery Method, the Authority will certify an estimate of the Total Cost of the Project to the Port Council and ODOT and the expenses to be incurred in connection with the construction of the Project.
2. If, after receipt of the bids, the Authority reasonably determines that the Project cannot be constructed at or under the Maximum Price, the Authority will provide written notice to the Port Council and ODOT, after which ODOT shall have the right to (i) agree to an increase in the Maximum Price or (ii) direct the Port Council and the Authority to terminate this Agreement; provided if this Agreement is terminated in accordance with this subsection, ODOT has agreed in the Master Development Agreement to promptly reimburse the Port Council for all out-of-pocket expenses incurred by the Authority in connection with the negotiation of this Agreement and any costs related to Provision of the Project. The Port Council will pay to the Authority all reimbursements received by the Port Council from ODOT for all out-of-pocket expenses incurred in connection with the negotiation of this Agreement and Provision of the Project.

D. Plans and Specifications; Completion.

1. Within thirty (30) days of the execution of this Agreement, the Authority will review and accept the Plans and Specifications and begin the process of contracting for Provision of the Project.
2. If the Plans and Specifications change after ODOT approval, the Authority shall submit any modifications to the Plans and Specifications to ODOT for prior approval.
3. The Authority will provide to ODOT the ability and right to provide its input on the Provision of the Project, including the right of final approval of the design and maintenance features of the Project.
4. The Authority will develop a monthly reporting and tracking system for all proposed change orders identified by the Contractor, including cost and cost estimates. The Authority shall deliver a copy of each such proposed change order to the Port Council and ODOT for review and approval by ODOT. No change order shall be effective until such change order is approved by ODOT.
5. The Authority agrees to substantially complete the Project in accordance with the Plans and Specifications no later than the Completion Date, provided any delay by ODOT in responding or providing comments or approval, as the case may be, that shall be required of ODOT under the

terms of this Agreement or the Master Development Agreement shall, in accordance with the terms of the Master Development Agreement, extend to Completion Date by one (1) day for each day of delay.

E. Bidding of Project; Construction Contract.

1. The Authority will (a) competitively bid the construction of the Project in compliance with the applicable provisions of the Act; (b) select and contract with the responsive Contractor who submits the lowest responsible bid, according to State law; (c) enter into the Construction Contract with the Contractor, which shall include a schedule depicting the commencement and completion of construction of the Project that is acceptable to ODOT; (d) provide and maintain a competent Construction Administrator; and (e) bear the responsibility of ensuring that construction conforms to the approved Plans and Specifications and any other plans, surveys, profiles, material specifications, and construction timelines developed in connection with Provision of the Project.
2. The Authority will execute the Construction Contract immediately after ODOT certifies to the Port Council and the Authority that the Funds are available for Provision of the Project.
3. The Authority will require in the Construction Contract that the Contractor and each subcontractor will comply with all applicable state and federal law regarding a drug-free workplace and make a good faith effort to ensure that the respective employees of the Contractor and each subcontractor will not purchase, transfer, use or possess illegal drugs, or abuse prescription drugs in any way.

F. Books and Records; Inspection.

1. From time to time upon the request of the Port Council or ODOT, the Authority will make available to the Port Council and ODOT for inspection or reproduction all records, books and documents of every kind and description in the Authority's possession or control which relate to the performance of its duties under this Agreement.
2. The Authority will (a) maintain this Agreement, the Construction Contract and all documents and records in connection with the performance of this Agreement as a "public record" in accordance with ORC Section 149.43; (b) make available to the agents, officers and auditors of the Port Council and ODOT its books, documents and records relating to its obligations under this Agreement upon request; (c) keep financial records in accordance with Generally Accepted Accounting Principles (GAAP); (d) keep all books, documents and records for a period of not less than three (3) years after completion of Provision of the Project, provided any such

books, documents and records that are the subject of an auditing dispute shall be preserved for not less than the term of that dispute.

3. The Authority agrees to provide in the Construction Contract and in each other contract entered into in connection with this Agreement and the Project the following language:

“The contractor agrees to make available for inspection or reproduction by the Authority, the Port Council and ODOT all records, books and documents of every kind and description which relate to this contract as the Authority, the Port Council or ODOT may request from time to time.”

G. Mechanics Liens.

1. The Authority will (a) keep the construction of the Project free of any liens arising from work performed, materials furnished or obligations incurred by the Authority, and (b) deliver to ODOT signed lien waivers in accordance with Section VI hereof.
2. The Authority will (a) notify the Port Council and ODOT of the filing of any mechanic's liens against the Project within three (3) business days of receipt of notice of lien, and the failure to so notify the Port Council and ODOT or to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 may result, at the election of the Port Council or at the direction of ODOT, in the termination of this Agreement.

- H. Insurance. The Authority will provide to the Port Council and ODOT, upon request, (i) proof of adequate insurance coverage, consistent with construction projects of a similar type as the Project, which insurance shall name the Port Council and ODOT as additional insureds, (ii) proof that the Contractor has procured and is maintaining adequate builder's risk insurance, and (iii) proof that the Contractor and any subcontractors are licensed and not debarred or subject to debarment proceedings.

I. Warranties; Claims; Construction Documents.

1. The Authority will retain all Warranties until the Transfer Date. From and after the Transfer Date, ODOT's sole remedy for defects in the construction or design of the Project will be the Warranties, and the Authority and the Port Counsel expressly disclaims all other warranties, whether express or implied, or arising by operation of law, including but not limited to, any warranty of merchantability or fitness for any particular purpose. The Authority, at its option, may obtain a warranty bond or other surety to guarantee the performance of the Warranties.
2. The Authority agrees to (a) subrogate to ODOT all Claims; (b) assign to ODOT all of the Authority's rights in and to the Claims and against any other Person against which such subrogation rights may be enforced; (c)

immediately notify the Port Council and ODOT in writing of any Claim; (d) authorize ODOT to sue, compromise or settle any such Claim, with the intention that ODOT be fully substituted for the Authority and subrogated to all of the Authority's rights to recover under any such Claim; and (e) cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim including requests for information and/or documents and/or to testify.

3. Upon Substantial Completion of the Project, the Authority will identify and pursue directly all such Claims as ODOT determines that the Authority shall pursue. The Authority's costs in pursuing any such Claims will be included in the Total Cost of the Project.
4. In accordance with the terms of the Master Development Agreement, neither the Port Council nor the Authority shall have any liability to ODOT from and after the Transfer Date, except as otherwise provided in Section I.1 hereof.

J. Non-Discrimination. In carrying out this Agreement the Authority will, (a) not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, handicap, age, Vietnam-era veteran status, or disability as that term is defined in the Americans with Disabilities Act; (b) ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, national origin, handicap, age or Vietnam-era veteran status, which action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship; (c) post in conspicuous places, available to employees and applicants for employment, notices setting forth its nondiscrimination policy; (d) in all solicitations or advertisements for employees placed by or on behalf of the Authority, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, sexual orientation, national origin, handicap, age, Vietnam-era veteran status or disability; and (e) incorporate the foregoing nondiscrimination requirements in all of its contracts for any work on the Project (other than subcontracts for standard commercial supplies or raw material) and require all of its contractors or subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

K. ODOT Third-Party Beneficiary. The Authority acknowledges and agrees with the Port Council that ODOT is an intended third-party beneficiary of this Agreement.

VI. DISBURSEMENT OF FUNDS TO PAY PROJECT COSTS

A. Disbursements. Subject to the terms and conditions of this Agreement, the Port Council shall make a Disbursement from Funds from time to time for payment of the Total Cost of the Project in an amount not exceeding the Maximum Price, as

such Provision of the Project is completed. The Port Council's obligation to make any such Disbursement is conditioned upon receipt by the Port Council and ODOT of a Disbursement Request by the Authority, approval of the Disbursement Request by the Port Council and ODOT, receipt by the Port Council and ODOT of items required by this Section VI, and satisfaction of all other conditions to Disbursements set forth in this Agreement.

- B. Disbursement Requests. At least ten (10) business days prior to the date on which the Authority desires a Disbursement, the Authority shall submit to the Port Council and ODOT (i) a Disbursement Request, signed by the Authorized Authority Representative and (ii) a requisition using AIA Form G702/G703 or such other form as the Port Council and ODOT may request signed by the Contractor and subcontractors and notarized, accompanied by original lien waivers for the prior period (as provided under Section VI.D), any original Change Orders, copies of invoices for construction costs, and such other information and documentation required hereunder. The Port Council shall not be required to make a Disbursement of Funds until ten (10) days after the last required item under this subsection is received.
- C. Timing. Requests for Disbursements shall not be made more often than once a month and the amount advanced shall be subject to the Retainage until the Retainage disbursement is made. Prior to each Disbursement, the Port Council may request any Construction Inspector to inspect the Project and verify the accuracy of the Disbursement Request and all other reports, requests or documents submitted by the Authority.
- D. Lien Waivers. The Authority shall furnish the Port Council and ODOT with a schedule from the Authority identifying all contractors or subcontractors who have performed work or furnished materials in connection with the Project, together with lien waivers from the Contractor and all subcontractors who have performed work or furnished materials in connection with the Project, current through the beginning of the period covered by such Disbursement Request.
- E. Other Disbursement Contingencies. The Port Council shall not be obligated to make any Disbursement hereunder or to take any action under this Agreement if, on the date of a proposed Disbursement or the date of a proposed action, an Event or Default exists or an event has occurred which with the passage of time or the giving of notice or both would constitute an Event of Default.
- F. Payment of Disbursements. The Port Council may, at its option, make Disbursements (i) to a Project account of the Authority established by the Governing Board of the Authority for the payment of Project costs or (ii) directly to Persons furnishing labor or materials to the Project, as provided in the Disbursement Request.
- G. Retainage Disbursement. The amount of each Disbursement shall be subject to a Retainage (the "Retainage") equal to the Retainage Percentage of costs incurred

under the Construction Contract. The Port Council shall make the final disbursement of Funds only upon a fulfillment of the following conditions:

1. No Event of Default. No Event of Default shall exist.
 2. Conditions to Disbursement. All of the conditions to Disbursement under this Section VI shall have been met.
 3. Completion Certificate. The Port Council and ODOT shall have received a certificate of the Contractor to the effect that, to its best knowledge, the Project has been fully completed in accordance with the Plans and Specifications and all applicable laws and regulations.
 4. As-build Documents. The Authority will (i) provide ODOT with final, as-built conforming documents in both PDF and Microstation formats; and (ii) agree that ODOT shall be the sole owner of all documents generated from the Provision of the Project.
 5. Final Lien Releases. The Port Council and ODOT shall have received final lien releases from the Contractor and all subcontractors with respect to the Provision of the Project.
 6. Miscellaneous. The Authority shall provide the Port Council and ODOT with such other information and documentation reasonably requested by the Port Council or ODOT.
- H. Access to Project; Right to Stop Work; Correction of Defective Work. The Authority will allow the Port Council, ODOT and any Construction Inspector, at all times, the right of entry and free access to the Project and the right to inspect all work done, labor performed and materials furnished or to be furnished in Provision of the Project. If the Port Council, ODOT or the Construction Inspector determines that any work or material does not comply with the Plans and Specifications or sound building practice or otherwise departs from the requirements of this Agreement or the Construction Contract, then the Port Council or ODOT may require the work to be stopped and may withhold Disbursements until the matter is corrected to the satisfaction of the Port Council and ODOT. The Port Council and ODOT shall also have the right to require that the work be stopped upon the occurrence of an Event of Default. The Authority shall promptly correct or cause to be corrected any non-conforming work or materials. No such action by the Port Council or ODOT will affect the Authority's obligation to complete the Project on or before the Completion Date. Neither the Port Council nor ODOT shall be under any duty to examine, supervise or inspect the Plans and Specifications or Provision of the Project. No default or breach of the Authority will be waived by any inspection by the Port Council, ODOT or the Construction Inspector, nor shall any such inspections constitute a representation that there has been or will be compliance with the Plans and Specifications or that the construction is free from defective materials or

workmanship. Any Construction Inspector's services are for the sole benefit of the Port Council and ODOT, and neither the Port Council nor ODOT shall be liable in any manner as a result of any inspection.

- I. Construction Inspector. The Port Council shall have the right to retain a Construction Inspector to (i) provide consulting services on behalf of the Port Council in connection with Provision of the Project, (ii) inspect Provision of the Project, and (iii) perform such other services with respect thereto on behalf of the Port Council as the Port Council may request. The fees and expenses of any Construction Inspector shall be included in the Total Cost of the Project and paid by the Port Council from the Funds. The Port Council will require any Construction Inspector retained by it to certify to the Authority, the Port Council and ODOT that such Construction Inspector does not have a conflict of interest with the Contractor.

VII. FEE

In consideration of the services to be provided by the Authority in the Provision of the Project pursuant to this Agreement, the Port Council shall pay to the Authority, from the fee received by the Port Council from ODOT pursuant to the Master Development Agreement, a management fee (the "Fee") equal to _____ percent (___%) of the Total Cost of the Project. The Fee shall be paid as a percentage of each Disbursement at such time as a Disbursement is paid.

VIII. EVENTS OF DEFAULT; REMEDIES

- A. Events of Default. The occurrence of any of the following events shall be an "Event of Default" hereunder:
 1. any material representation or warranty made by the Authority in this Agreement or in any certificate, document, or instrument delivered by the Authority pursuant to or in connection with this Agreement shall prove to have been incorrect, incomplete or misleading in any material respect;
 2. any "event of default" shall have occurred under the Construction Contract (as defined therein);
 3. any default in the due observance or performance by the Authority of any term, covenant or agreement set forth in this Agreement and the continuance of such default for thirty (30) days after written notice shall have been given to the Authority by the Port Council or ODOT;
 4. the Authority shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) make an assignment for the benefit of creditors, (iii) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it, or (iv) institute any proceeding seeking to have entered against it an order for relief under the United States

Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it and have the proceeding remain undismissed or unstayed for ninety (90) days; or

5. a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the Authority and such appointment continues undischarged for a period of ninety (90) or more days.
- B. Resolution of Disputes. Upon the occurrence of an Event of Default under Sections VIII.A.1, 2 or 3 hereof occurs and is continuing or if another dispute not constituting an Event of Default arises between the Authority and the Port Council in connection with this Agreement, prior to pursuing any remedies available to it under this Agreement or law, the disputing Party will send written notification of such dispute to the other Party within ten (10) days of discovery of such dispute. In such notification, the disputing Party shall present such evidence as may support its position. Within ten (10) days, the Parties shall review the facts and circumstances surrounding the dispute for the purpose of determination and agree to use good faith efforts to resolve such dispute within a reasonable period of time. The resolution of any disputes regarding design or construction decisions, however, shall be approved by ODOT subject to the area of jurisdiction.
- C. Remedies. If the Event of Default or dispute cannot be resolved by the Parties pursuant to Section VIII.B hereof, each of the Parties may seek any appropriate remedy available to it at law or in equity.

IX. ETHICS LAW REQUIREMENTS

- A. Ohio Ethics Laws. The Authority agrees in the performance of this Agreement that it will adhere to the requirements of Ohio Ethics law as provided by ORC Section 102.04, including without limitation (a) ORC Section 102.04(A) which prohibits a state official or employee from receiving compensation, other than from their own agency, for personal services rendered in a case, proceeding, application, or other matter before any state agency, and (b) ORC Section 102.04(B) which prohibits state officials and employees from selling goods or services to state agencies, except by competitive bidding; provided that non-elected state officials and employees may qualify for an exemption under ORC Section 102.04(D) if: (i) the agency with which the official or employee seeks to do business is an agency other than the one with which they serve; and (ii) prior to rendering personal services or selling or agreeing to sell goods or services, the official or employee files an ORC Section 102.04(D) statement with the Ohio Ethics Commission, the agency with which they serve, and the agency with which they seek to do business, which statement must include a declaration that the non-

elected state official or employee disqualifies themselves for a period of two (2) years from any participation in their official capacity as a board or commission member in any matter involving any official or employee of the agency with which he seeks to do business.

- B. Breach of Agreement. The Authority acknowledges and agrees that a failure by a non-elected state official or employee to file a declaration statement as required under ORC Section 102.04(D) will be a breach of this Agreement, and ODOT may, at its option, direct the Port Council to terminate this Agreement.

X. NOTICE

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's Notice Address (with those copies specified with a parties Notice Address) by registered or certified mail, return receipt requested, or by courier, express or overnight delivery, and by confirmed e-mail. 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.

XI. GENERAL PROVISIONS

- A. The Parties will be relieved of all further obligations under this Agreement upon receipt of written notice from ODOT that all of the following events have occurred:
1. transfer and conveyance to ODOT of all respective rights, title and interest to all of the Project, including any of interest in real estate acquired for the Project;
 2. fulfillment by the Authority of its obligations under this Agreement and the obligations of the Port Council under the Master Development Agreement in connection with the Project.
- 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 Port Council may hire or contract with an agent or private contractor to perform some or all the obligations of the Port Council under this Agreement.
- 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. This Agreement will be construed and interpreted and the rights of the Parties determined under the laws of the State. In accordance with ORC Section

5501.22, the Parties agree that venue for any action arising under this Agreement shall be in Franklin County, Ohio.

- E. Modification to this Agreement may only be accomplished by written amendment, signed by both Parties, and upon mutual agreement.
- F. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors and assigns.
- G. 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.
- H. In accordance with the terms of the Master Development Agreement, all financial obligations of ODOT under this Master Development Agreement and of the Port Council under this Agreement are 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 any payments that may be due under this Agreement, this Agreement will terminate on the date the available appropriation expires without any further obligation of ODOT or the Port Council.

XII. TIME OF ESSENCE

Time shall be considered of the essence for all activities undertaken or required pursuant to this Agreement.

[signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their respective duly authorized officers as of the date and year as first written above.

Authority:

By:

Name: _____

Title: _____

Port Council:

Ohio Council of Port Authorities, Inc.

By: _____

Name: _____

Title: _____

FISCAL OFFICER'S CERTIFICATE

The undersigned, Fiscal Officer of the Authority, hereby certifies that the moneys required to meet the obligations of the Authority during the year 20__ under this Agreement have been lawfully appropriated by the Governing Board of the Authority for such purposes and are in the treasury of the 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: _____, 20__

EXHIBIT A

PROJECT

Agreed Upon Delivery Method:

Completion Date: _____, 20__

Maximum Price: \$ _____

Retainage Percentage: _____%

Description of Project:

EXHIBIT B

FORM OF REQUEST FOR DISBURSEMENT

Request No.	
Date	
Amount Requested	\$

TO: Ohio Council of Port Authorities, Inc.
State of Ohio, Department of Transportation

RE: Project Development Agreement (the "Agreement") between the Ohio Council of Port Authorities, Inc. (the "Port Council") and _____ (the "Authority").

Capitalized word and terms not defined in this request will have the meanings assigned to them in the Agreement.

ODOT Project No.: _____

In accordance with the terms of the Agreement, you are hereby authorized and requested to make an installment payment of the Funds in the amount of this Disbursement Request and disburse those funds in the amounts and to the Persons shown by the attached Schedule, which is incorporated herein by this reference and made a part hereof, and which indicates a Disbursement of a portion of the Total Cost of the Project. Attached hereto are invoices supporting the Disbursement Request and lien releases/waivers supporting the amounts previous Disbursements.

The undersigned Authorized Authority Representative hereby certifies to the Port Council and ODOT as follows:

(i) The labor, services, and/or materials covered by this Disbursement Request have been performed upon or furnished in connection with Provision of the Project.

(ii) Provision of the Project to date has been performed in accordance with the Plans and Specifications and there have been no changes in the Plans and Specifications except as have been approved by ODOT in accordance with the terms of the Agreement.

(iii) To its knowledge, no default and no event or condition which, with the passage of time or the giving of notice or both, would constitute a default under the Construction Contract, has occurred or exists as of the date hereof.

(iv) There have been no changes in the scope or time of performance of the work of construction, nor any extra work, labor, or materials ordered or contracted for, except as have been approved by ODOT in accordance with the terms of the Agreement.

(v) Funds hereby requested for construction costs will pay all sums payable to-date for any labor, materials, and services furnished in connection with Provision of the Project.

(vi) All amounts of previous Disbursements included in the Total Costs of the Project pursuant to previous Disbursement Requests have been paid to the Persona entitled thereto, with the proper designation of contract and account for which payment was made.

(vii) No change is required in the Maximum Price, except as have been approved by ODOT in accordance with the terms of the Agreement.

(viii) All conditions set forth in the Agreement for Disbursement of Funds hereby requested have been fulfilled, and no Event of Default exists as of the date hereof.

(ix) The undersigned is an Authorized Authority Representative.

By _____
Authorized Authority Representative

Approved:

Ohio Council of Port Authorities, Inc.

By _____
Name: _____
Title: _____
Date: _____

Director of Transportation, State of Ohio

By _____
Name: _____
Title: _____
Date: _____

Schedule to Request for Disbursement

EXHIBIT C

AUTHORITY'S RESPONSE TO REQUEST FOR QUALIFICATIONS

[attached]

