

**CLEVELAND-CUYAHOGA COUNTY PORT AUTHORITY**  
**MEETING OF THE BOARD OF DIRECTORS**

Thursday, July 15, 2021 @ 8:30 a.m.

1100 W. 9<sup>th</sup> Street - 1<sup>st</sup> floor Conference Center

Conference Call Dial In: 866-503-4605 Conference Code: 2121367371

**AGENDA**

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1. Roll Call
2. Adoption of previous meeting minutes
  - A. June 10, 2021 - **Pages 1-3**
3. Public Comment Period – *Today's Agenda Items Only*
4. Reports and Communications from Officers and Committees
  - A. Chair's Comments
  - B. President's Comments
  - C. Committee Reports
    1. **Real Estate & Development Finance Committee**
      - a) ***Flats East Bank Tax Increment Financing Revenue and Refunding Bonds – Pages 4-21***  
*Presenter: Ms. Rhonda Winslow, Director of Finance*
      - b) ***Waverly & Oak Project Taxable Lease Revenue Bonds– Pages 22-34*** *Presenter: Ms. Rhonda Winslow, Director of Finance*
    2. **Maritime Committee**
      - a) ***Port of Cleveland's Sediment Processing & Management Facility 2021 General Site Maintenance & Capital Improvement Project – Pages 35-38***  
*Presenter: Mr. Nick LaPointe, Director, Planning & Capital Development*
      - b) ***General Cargo Terminal Dock 24 & 26 Master Modernization & Rehabilitation Project: Multiple Authorizations – Pages 39-50***  
*Presenter: Mr. Nick LaPointe, Director, Planning & Capital Development*
5. Public Comment Period – *Non-Agenda Items*
6. Next Scheduled Meeting – **September 9, 2021**
7. Adjourn

## **MINUTES**

### **CLEVELAND-CUYAHOGA COUNTY PORT AUTHORITY BOARD OF DIRECTORS MEETING Thursday, June 10, 2021**

The Special Meeting of the Cleveland-Cuyahoga County Port Authority Board of Directors was held via zoom on Thursday, June 10, 2021 with notice of the meeting information and call in number having been given to the public in advance. The meeting was called to order by Chair Ramsey at 8:35 a.m. Attendance by roll call showed the following:

#### **PRESENT VIA TELEPHONE**

Pat Ramsey, Chair  
Dave Wondolowski  
Andrew Jackson  
Darrel McNair  
Jan Roller

#### **ABSENT & EXCUSED**

J. Stefan Holmes, Secretary  
Margot Copeland  
Paul Hoogenboom  
Peggy Zone Fisher

#### **ALSO PRESENT VIA TELEPHONE**

W. Friedman, President & CEO  
D. Gutheil, Chief Commercial Officer  
C. Naso, Chief Financial Officer  
M. Rivalsky, Controller  
R. Snipes, Staff Accountant  
G. Woodson, Director, Development Finance & Inclusion  
R. Winslow, Finance Director  
M. Freilino, Manager, Exec. & Admin. Operations  
L. Sternheimer, Director, Urban Planning & Engagement  
J. Davis, Vice President, External Affairs  
N. LaPointe, Director, Planning & Capital Development  
C. Beck, GIS/Environmental Specialist  
D. Wilcox, Climaco, Wilcox, Peca, & Garofoli Co., L.P.A.  
P. Ritzert, Climaco, Wilcox, Peca & Garofoli Co., L.P.A.  
A. Knight, Shark & Minnow  
D. Bemer, Shark & Minnow  
E. Hu, Shark & Minnow

#### **APPROVAL OF MINUTES**

The minutes of the Board of Directors meeting of May 13, 2021 were presented for approval by the Board, copies having been delivered in advance to all Directors. On motion by Director McNair, seconded by Director Jackson and unanimously carried by roll call vote, the Board minutes of May 13, 2021 were approved.

### **PUBLIC COMMENT PERIOD**

Chair Ramsey then opened the floor for public comment related to agenda items. There being no public comment Chair Ramsey moved to the Chair's Comments.

### **CHAIR'S COMMENTS**

Chair Ramsey addressed the Board and noted that the Board information session is scheduled for August 10, 2021.

### **PRESIDENT'S COMMENTS**

Mr. Friedman addressed the Board and said that maritime operations have been favorable. He noted that Mr. Jared Magyar has assisted in ensuring that seafarers are able to obtain the COVID-19 vaccine. This has proven to be beneficial for the crew(s) since they've been mobile the majority of the time the vaccine has not been available for them. Director McNair asked whether there are any anticipated delays regarding Irishtown Bend. Mr. Friedman replied yes. It's necessary that the last remaining parcel of property is obtained for regrading of the hillside. Without the parcel, stabilization of the hillside isn't possible. The schedule will definitely be impacted if the issue isn't resolved. The City has filed for rezoning of the hillside parcel in a larger effort to clean up zoning issues along the river. Thereafter, the owners of the parcel filed a building permit to make improvements to the existing property and proposed development of a wellness center of some sort. Chair Ramsey thanked Mr. Friedman for the update and asked that he continue to keep the Board informed. She also thanked Mr. Magyar for his efforts in coordinating vaccines for vessel crews.

### **REAL ESTATE & DEVELOPMENT FINANCE COMMITTEE**

#### ***Agenda Item 4(C)(1)(a) – 2010 Bonds, Hospice of the Western Reserve***

Ms. Rhonda Winslow addressed the Board and referred to pages 5-8 of the Agenda. Director Jackson asked whether the terms of the agreement allow for a renegotiation of rates. Ms. Winslow replied yes, every five-years. There being no further questions, on motion by Director McNair, seconded by Director Roller, and unanimously carried by roll call vote,

#### **RESOLUTION 2021-07**

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL INDENTURE, A FIRST SUPPLEMENTAL LOAN AGREEMENT, A SUPPLEMENTAL TAX COMPLIANCE AGREEMENT AND OTHER INSTRUMENTS, STATEMENTS AND DOCUMENTS IN CONNECTION WITH AMENDMENTS TO TERMS OF ITS VARIABLE RATE REVENUE BONDS, SERIES 2010 (HOSPICE OF THE WESTERN RESERVE PROJECT) PREVIOUSLY ISSUED BY THE ISSUER;  
AUTHORIZING AND APPROVING RELATED MATTERS

was adopted. The resolution in its full text is incorporated into the Resolution Journal of the Port Authority.

**BUDGET & ADMINISTRATION COMMITTEE**

***Agenda Item 4(C)(2)(a) – 2022 Alternative Tax Budget***

Mr. Naso addressed the Board and referred to pages 9-12 of the Agenda. Director Roller asked when the next Port levy will be on the ballot. Mr. Friedman replied that it would be beneficial to wait and see what else is on the ballot in 2022 before making a decision.

On motion by Director Wondolowski, seconded by Director McNair, and unanimously carried by roll call vote,

RESOLUTION 2021-08

A RESOLUTION ADOPTING THE 2022 ALTERNATIVE TAX BUDGET OF THE  
CLEVELAND-CUYAHOGA COUNTY PORT AUTHORITY

was adopted. The resolution in its full text is incorporated into the Resolution Journal of the Port Authority.

**PUBLIC COMMENT**

There being no public comment, on motion by Chair Ramsey, seconded by Director McNair, and unanimously carried by roll call vote, the meeting was adjourned at 9:01 a.m.

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CHAIR

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SECRETARY

## **REAL ESTATE & DEVELOPMENT FINANCE COMMITTEE**

### ***Agenda Item 4(C)(1)(a) – Flats East Bank Tax Increment Financing Revenue and Refunding Bonds***

#### **Background**

On October 5, 2009 Cleveland City Council passed Tax Increment Financing Ordinance No. 1379-09 declaring the increase in assessed value of approximately eighteen (18) acres within the City of Cleveland (the “City”) and including the Flats East Bank Development site (the “TIF District”). On December 9, 2020, the Cleveland City Council passed Ordinance No. 673-2020 which amended the 2009 ordinance and extended the term of the TIF Exemption for an additional 30 years.

The Flats East Development LLC (the “Developer”) and its affiliates have developed the first phase of Flats East Bank, a multi-use project, including retail, office, and hotel and related public and private infrastructure improvements (“Phase I” and, collectively with Phase II, the “Development”). Phase I consists of a 23-floor office tower with an open-air rooftop deck sitting atop a 3-story parking garage, a 150-room hotel, retail spaces, and a 16,000 square foot health club and public and private improvements, located on the banks of the Cuyahoga River in the downtown area of the City. Construction on Phase I commenced in 2010 and was completed in 2012.

The second phase is adjacent to Phase I and consists of (i) a mixed-use building containing approximately 235,000 square feet of residential units located above approximately 61,000 square feet of ground floor retail and related parking and infrastructure and (ii) four retail outparcels and parking (“Outparcels” and together with the Mixed Use Building, collectively, “Phase II”). The retail and residential projects were completed in 2015.

In 2010, the Cleveland-Cuyahoga County Port Authority (the “Issuer” or “Port Authority”), the Development Finance Authority of Summit County (formerly known as the Summit County Port Authority) (the “DFASC”) and the State of Ohio (the “State”) each issued a series of tax-exempt Recovery Zone Facility Bonds which collectively funded a portion of the costs of constructing Phase I. The bonds were issued through the bond funds of the respective issuers and received investment grade bond ratings.

In 2014, the Port Authority issued an additional series of bonds to fund a portion of the costs of constructing Phase II. These bonds were also issued through the Port Authority’s bond fund program.

#### **Current Situation**

The Port Authority is being requested to issue approximately \$45.7 million of fixed-rate, tax-exempt bonds issued in two series under Trust Agreements for the refunding of the aforementioned bonds issued in 2010 and 2014. A senior series of tax-exempt refunding bonds (the “Series 2021A Bonds”) secured solely by PILOTs (“Payments in Lieu of Taxes”) and a subordinate series of tax-exempt refunding private activity bonds (the “Series 2021B Bonds”) secured by PILOTs and Minimum Service Payments.

The proceeds of the Port Authority Series 2021A Bonds will be used to (i) refund the Port Authority Series 2014A Bonds, (ii) refinance other loans or other subordinate obligations related to the Development, (iii) fund a debt service reserve fund, and (iv) pay costs of issuance. Additionally, the proceeds of the Port Authority Series 2021B Bonds will be used to (i) refund the Port Authority Series 2010B Bonds, the DFASC Series 2010B Bonds and the OEBF Series 2010-12 Bonds, (ii) fund a debt service reserve fund, and (iii) pay costs of issuance.

The Series 2021A Bonds and the Series 2021B Bonds will be sold in separate transactions by KeyBanc Capital Markets (the “Underwriter”) and will be offered through a limited public offering. The Port Authority will be the non-recourse issuer of the Series 2021A Bonds and Series 2021B Bonds.

The estimated sources and uses for the bonds is as follows:

<b><u>Sources</u></b>	<b><u>2021A(Senior)</u></b>	<b><u>2021B (Sub.)</u></b>	<b><u>Total</u></b>
Par Amount	\$22,310,000	\$23,425,000	\$45,735,000
DSRF Deposits – Refunded	690,046	2,837,118	3,527,164
<b>Total Sources</b>	<b><u>\$23,000,046</u></b>	<b><u>\$26,262,118</u></b>	<b><u>\$49,262,164</u></b>
<b><u>Uses</u></b>			
Development Loans Escrow	\$10,149,980	\$ -	\$10,149,980
Refunding Escrow	9,553,720	23,934,143	33,487,863
Debt Service Reserve Fund	1,569,011	1,855,935	3,424,946
Cost of Issuance	1,727,335	468,500	2,195,835
Rounding Amount	-	3,540	3,540
<b>Total Uses</b>	<b><u>\$23,000,046</u></b>	<b><u>\$26,262,118</u></b>	<b><u>\$49,262,164</u></b>

Security for the Series 2021A Bonds will consist of a Senior Pledge of the PILOTs, and a Debt Service Reserve Fund. The term of the TIF Bonds is anticipated to be 34 years.

Security for the Series 2021B Bonds will consist of a Subordinate Pledge of the PILOTs, and a Debt Service Reserve Fund. The Series 2021B Bonds will be further secured by Minimum Service Payments to be made by the property owners should PILOT revenues be insufficient to pay debt service and administrative expenses when due.

Parcels that are currently in the name of the Port as a result of the construction and development of the project over the last several years will be deeded back to the Developer at closing and in conjunction with the refunding of the 2010 and 2014 Port Bond Fund Bonds.

The Port Authority will be paid an issuance fee of 50 basis points on the total amount of Bonds issued at closing which is estimated to be \$218,975. The Port Authority will receive an administrative fee of 12.50 basis points per annum based on the outstanding principal amount of the Bonds as long as the Bonds are outstanding.

**Recommendation**

*The Board of Directors is requested to approve Resolution No. 2021-09 authorizing the issuance and sale of Tax Increment Financing Revenue and Refunding Bonds Senior Series 2021A and Subordinate Series 2021 (Flats East Bank Project) totaling an amount not to exceed \$60 million for the purpose of refunding a portion of the Port Authority's 2010B Bonds, the DFASC Series 2010B Bonds and the OEBF Series 2010-12 Bonds, and the Port Authority's Series 2014A Bonds for the Flats East Development LLC and authorize the execution of all other associated financing documents necessary in relation thereto.*

## RESOLUTION NO. 2021-09

A RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE AND SALE OF A MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$60,000,000 OF ONE OR MORE SERIES OF REVENUE BONDS OF THE CLEVELAND-CUYAHOGA COUNTY PORT AUTHORITY (“PORT AUTHORITY”), SERIES 2021 (FLATS EAST BANK PROJECT) (THE “SERIES 2021 BONDS”) FOR THE PURPOSE OF FINANCING COSTS OF “PORT AUTHORITY FACILITIES” WITHIN THE MEANING OF SECTION 4582.01, OHIO REVISED CODE, BY REFUNDING CERTAIN OUTSTANDING OBLIGATIONS FOR INTEREST COST SAVINGS AND PAYING COSTS OF ISSUANCE; AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE TRUST INDENTURES TO SECURE THE SERIES 2021 BONDS; AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF AN ADMINISTRATION AGREEMENT, COOPERATIVE AGREEMENT, DISBURSING AND PAYMENT AGREEMENT, TAX COMPLIANCE CERTIFICATE, TAX LIEN SALE AGREEMENT, AND CERTAIN OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2021 BONDS; AUTHORIZING THE EXECUTION OF ONE OR MORE BOND PURCHASE AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2021 BONDS; AND AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, the Cleveland-Cuyahoga County Port Authority (the “Port Authority”), a body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the “State”), is authorized and empowered, by virtue of the laws of the State, including without limitation, Section 13 and Section 16 of Article VIII, Ohio Constitution, and Chapter 4582, Ohio Revised Code (collectively, the “Act”), (a) to issue revenue bonds for the purpose of financing the costs of acquiring, constructing, equipping, installing or otherwise improving “port authority facilities,” as defined in the Act, including specifically by using the proceeds of its revenue bonds to refund a portion of certain outstanding obligations, (b) to enter into agreements with respect to the financing, refinancing, acquisition, construction, equipping, improvement and installation of such facilities and to provide for a pledge of certain revenues sufficient to pay the principal of and interest and any premium on those revenue bonds, (c) to secure those revenue bonds by one or more trust indentures, as provided herein, and (d) specifically in furtherance of the foregoing, to enact this Bond Legislation and to enter into the Administration Agreement, the Cooperative Agreement, the Disbursing Agreement, the Tax Compliance Certificate, the Tax Lien Sale Agreement, the Series 2021A Trust Indenture and the Series 2021B Trust Indenture, each as defined in Section 1, upon the terms and conditions provided herein and therein; and

WHEREAS, the Port Authority previously issued its (i) \$8,800,000 Development Revenue Bonds (Port of Cleveland Bond Fund), Series 2010B (City of Cleveland – Flats East Development Project), dated December 21, 2020 (the “Series 2010B Bonds”) to finance a portion of the costs of acquiring, constructing, installing, equipping, and improving certain “port authority facilities”, as defined in Section 4582.01, Ohio Revised Code, consisting specifically of an approximately 476,000 square foot, 18-story office tower (the “Series 2010B Project”) located on the banks of the Cuyahoga River in the City of Cleveland, Ohio (“the City”); and



WHEREAS, to assist in financing the Series 2010B Project, (i) the Development Finance Authority of Summit County previously issued its \$4,700,000 Bond Fund Program Tax-Exempt Recovery Zone Facility Revenue Bonds, Series 2010B (City of Cleveland – Flats East Development Project), dated December 21, 2020 (the “DFASC Bonds”), and (ii) the State of Ohio previously issued its \$15,000,000 Economic Development Revenue Bonds (Ohio Enterprise Bond Fund), Series 2010-12 (Flats Development LLC Project), dated December 21, 2020 (the “OEBF Bonds”); and

WHEREAS, the Port Authority previously issued its \$7,000,000 Taxable Development Revenue Bonds (Port of Cleveland Bond Fund), Series 2014A (City of Cleveland – Flats East Phase II Development Project), dated April 15, 2014 (the “Series 2014A Bonds” and, together with the Series 2010B Bonds, the DFASC Bonds, and the OEBF Bonds, the “Outstanding Bonds”) to finance a portion of the costs of acquiring, constructing, installing, equipping and improving certain “port authority facilities”, as defined in Section 4582.01, Ohio Revised Code, consisting specifically of approximately 235,000 square feet of residential units and an attached parking structure located in the City (the “Series 2014A Project”); and

WHEREAS, the Series 2010B Project and the Series 2014A Project the (“Refinanced Projects”) both constitute portions of the same Development, as defined in Section 1 and, in connection with the construction of such Development, Flats East Development LLC, an Ohio limited liability company, together with any successors or assigns (the “Developer”) also undertook certain other Project Loans, as defined in Section 1; and

WHEREAS, the Developer has requested that the City and the Port Authority assist in the refinancing of the Development, with the Port Authority issuing its Series 2021 Bonds in one or more series and using the proceeds thereof to (i) currently refund the outstanding portion of the Outstanding Bonds, (ii) refinance all or a portion of the Project Loans, (iii) fund the Debt Service Reserve, and (iv) pay the costs of issuance of the Series 2021 Bonds (the “Series 2021 Refinancing”); and

WHEREAS, the Series 2021 Refinancing will enhance, foster, aid, provide or promote economic development, commerce and housing and create and preserve jobs and employment opportunities within the financing jurisdiction of the Port Authority and the State of Ohio, and the Port Authority is authorized and empowered by Sections 13 and 16 of Article VIII, Ohio Constitution, and Sections 4582.01 through 4582.20 and 4582.60, Ohio Revised Code, as enacted and amended from time to time, to refinance the acquisition, construction, installing and equipping of the Refinanced Projects, and to issue and sell its revenue obligations therefor; and

WHEREAS, this Legislative Authority has determined that it is necessary and proper and in the best interest of the Port Authority to issue revenue bonds in the maximum aggregate principal amount of \$60,000,000 at this time to finance the Series 2021 Refinancing pursuant to this Bond Legislation, the Cooperative Agreement, the Disbursing Agreement, the Series 2021A Trust Indenture, and the Series 2021B Trust Indenture.

NOW, THEREFORE, Be It Resolved by the Board of Directors of the Cleveland-Cuyahoga County Port Authority:

Section 1. Definitions. In addition to the words and terms elsewhere defined in this Bond Legislation, the following words and terms as used in this Bond Legislation shall have the following meanings unless otherwise provided and unless the context or use indicates another or different meaning or intent:

“Act” means Sections 4582.01 through 4582.20 and 4582.60 of Chapter 4582, Ohio Revised Code, all as enacted and amended from time to time pursuant to Section 13 and Section 16 of Article VIII of the Ohio Constitution.

“Assigned Service Payments” means the payments to be made by the City to the Disbursing Agent for the benefit of the Port Authority to secure the Series 2021 Bonds in accordance with, subject to the conditions of and as defined in the Cooperative Agreement.

“Authorized Denominations” has the meaning assigned to the term in the Trust Indentures.

“Authority Annual Fee” means the annual administrative fee of the Port Authority equal to 0.125% of the outstanding principal amount of the Series 2021 Bonds, paid semi-annually in advance for the next succeeding six-month period commencing on the Closing Date and each subsequent June 1 and December 1 thereafter until final maturity of the Bonds.

“Bond Legislation” means this resolution and one or more Certificates of Award executed pursuant to this resolution.

“Bond Purchase Agreements” means the Bond Purchase Agreement by and between the Authority and the Original Purchaser relating to the Series 2021A Bonds and the Bond Purchase Agreement by and between the Authority and the Original Purchaser relating to the Series 2021B Bonds and, where the context admits, “Bond Purchase Agreement” means the applicable Bond Purchase Agreement.

“Bond Service Charges” means, for any period or payable at any time, the principal of and interest and any premium on the Series 2021 Bonds for that period or payable at that time, whether due at maturity or upon acceleration or redemption.

“Bonds” has the meaning assigned to such term in the Trust Indentures.

“Book-Entry Form” or “Book-Entry-Only System” means, with respect to the Series 2021 Bonds and if the Certificate of Award so provides, a form or system, as applicable, under which (i) the ownership of beneficial interests in Series 2021 Bonds, including the principal and redemption price thereof, and interest due thereon, may be transferred only through a book entry and (ii) physical Series 2021 Bond certificates in fully registered form are registered only in the name of a Depository or its nominee as holder of the Series 2021 Bonds, with the physical Series 2021 Bond certificates “immobilized” in the custody of the Depository. The Book-Entry-Only System is maintained by and is the responsibility of the Depository and not the Port Authority, the

Trustees or any Paying Agent. The book entry is the record that identifies, and records the transfer of the interest of, the owners of beneficial (book entry) interests in the Series 2021 Bonds.

“City” means the City of Cleveland, Ohio.

“Closing Date” means the date on which the Operative Documents are fully executed and delivered.

“Code” means the Internal Revenue Code of 1986, the regulations (whether proposed, temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable.

“Cooperative Agreement” means the Cooperative Agreement dated as of the first day of the month in which the Closing Date occurs, by and among the Port Authority, the City, the Developer, the Trustees, and the Disbursing Agent, as it may be duly amended, modified or supplemented from time to time in accordance with its terms.

“Declaration” means each of the Declarations of Covenants and Conditions Relative to Service Payments in Lieu of Taxes, Minimum Service Payment Obligations and Other Matters from the Owners of the TIF Parcels, each of which shall be filed for record in the Cuyahoga County Records on the Closing Date.

“Debt Service Reserve Requirement” means (i) for the Series 2021A Bonds, the Series 2021A Debt Service Reserve Requirement, and (ii) for the Series 2021B Bonds, the Series 2021B Debt Service Reserve Requirement.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of book entry interests in Series 2021 Bonds or the principal of and interest on the Series 2021 Bonds, and to effect transfers of Series 2021 Bonds, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Developer” means Flats East Development LLC, an Ohio limited liability company, together with any successors or assigns.

“Development” means the commercial and residential mixed-use development located in the City and as described in the Development Agreement, which contains an approximately 150-room hotel, restaurants, office buildings, apartment units, and retail space and parking garage, on certain real property containing approximately 20 acres of land as further described in the Cooperative Agreement.

“Development Agreement” means the Project Development Agreement, among the City, the Authority, and the Developer, dated as of May 22, 2006, as amended by the Amendment to

Project Development Agreement, among the City, the Authority, and the Developer, dated as of July 31, 2008, as such agreement may be further amended from time to time.

“Disbursing Agent” means The Huntington National Bank, as disbursing agent for the Trustees pursuant to the Disbursing Agreement.

“Disbursing Agreement” means the Disbursing and Payment Agreement, dated as of the first day of the month in which the Closing Date occurs, by and among the Port Authority, the Developer, the Trustees and the Disbursing Agent, as it may be duly amended, modified or supplemented from time to time in accordance with its terms.

“Disclosure Statements” means one or more offering memorandum, official statement, placement memorandum or other document used in connection with the original offering and sale of the Series 2021 Bonds.

“Executive” means the President of the Port Authority or the Chair of the Board of Directors or the Vice Chair of the Board of Directors if the Chair is unavailable or, if those positions are vacant or its incumbents are unavailable, absent or incapacitated, any officer of the Port Authority.

“Fiscal Officer” means the Secretary or an Assistant Secretary of the Port Authority or, if any of those positions is vacant or its incumbent is unavailable, absent or incapacitated, any officer of the Port Authority.

“Holder” or “holder of a Series 2021 Bond” means the person in whose name a Series 2021 Bond is registered on the Register maintained initially by the Trustees as Registrar.

“Interest Payment Date” means, with respect to the Series 2021 Bonds, the first (1<sup>st</sup>) day of each June and December while the Bonds remain outstanding, or as otherwise specified in the Certificate of Award.

“Legislative Authority” means the Board of Directors of the Port Authority.

“Operative Documents” means each of the following documents if and to the extent entered into by the Port Authority in connection with the issuance of and security for the Series 2021 Bonds: the Administration Agreement, the Bond Purchase Agreement, the Trust Indentures, the Cooperative Agreement, the Disbursing Agreement and the Tax Lien Sale Agreement.

“Original Purchaser” means, as to the Series 2021 Bonds, KeyBanc Capital Markets Inc.

“Owner” means any Person who, at any time, holds fee title to any TIF Parcel.

“Participant” means any participant contracting with a Depository under a book entry system and includes securities brokers and dealers, banks and trust companies, and clearing corporations.

“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.

“Pledged Revenues” means Pledged Revenues as defined in the Trust Indentures.

“Project Fund” means the Project Fund created by the Trust Indentures.

“Project Loans” means, certain outstanding indebtedness originally used to provide for costs of the Development.

“Project Site” means the Project Site for the Project as defined in the Cooperative Agreement.

“Series” means Series as defined in the Trust Indentures.

“Series 2021 Bond” or “Series 2021 Bonds” means, collectively, the Series 2021A Bonds, the Series 2021B Bonds, and any other series of Series 2021 Bonds designated by the Executive or Fiscal Officer in the Certificate of Award.

“Series 2021 Refinancing” means the use of the proceeds of the Series 2021 Bonds to (i) currently refund the outstanding portion of the Outstanding Bonds, (ii) refinance all or a portion of the Project Loans, (iii) fund the Debt Service Reserve, and (iv) pay the costs of issuance of the Series 2021 Bonds.

“Series 2021A Bonds” means a series of Port Authority revenue bonds authorized by this Bond Legislation to be issued pursuant to the Series 2021A Trust Indenture, which Series 2021A Bonds will be senior to the Series 2021B Bonds.

“Series 2021A Debt Service Reserve Requirement” means the maximum annual Bond Service Charges on the Series 2021A Bonds, excluding the final maturity of the Series 2021A Bonds.

“Series 2021A Trustee” means The Huntington National Bank, a national banking association organized under the laws of the United States, until a successor Series 2021A Trustee shall have become such pursuant to the applicable provisions of the Series 2021A Trust Indenture, and thereafter “Series 2021A Trustee” shall mean the successor 2021A Trustee.

“Series 2021A Trust Indenture” means the Trust Indenture to be dated as of the first day of the month in which the Closing Date occurs between the Port Authority and the Series 2021A Trustee, as duly amended or supplemented from time to time in accordance with its terms.

“Series 2021B Bonds” means a series of Port Authority revenue bonds authorized by this Bond Legislation to be issued pursuant to the Series 2021B Trust Indenture, which Senior 2021B Bonds will be subordinate to the Series 2021A Bonds.

“Series 2021B Debt Service Reserve Requirement” means the maximum annual Bond Service Charges on the Series 2021B Bonds, excluding the final maturity of the Series 2021B Bonds.

“Series 2021B Trustee” means The Huntington National Bank, a national banking association organized under the laws of the United States, until a successor Series 2021B Trustee shall have become such pursuant to the applicable provisions of the Series 2021B Trust Indenture, and thereafter “Series 2021B Trustee” shall mean the successor 2021B Trustee.

“Series 2021B Trust Indenture” means the Trust Indenture to be dated as of the first day of the month in which the Closing Date occurs between the Port Authority and the Series 2021B Trustee, as duly amended or supplemented from time to time in accordance with its terms.

“Service Payments” means Service Payments as defined in the Cooperative Agreement.

“Special Funds” means, collectively, the Special Funds as established under and identified in the Trust Indentures and in the custody of the Trustees.

“State” means the State of Ohio.

“Tax Compliance Certificate” means the Tax Compliance Certificate to be dated as of the date of delivery and execution of the Series 2021 Bonds, between the Developer and the Port Authority, as duly amended or supplemented from time to time in accordance with its terms.

“Tax Lien Sale Agreement” means the Tax Lien Sale Agreement, dated as of the Closing Date, among the County Treasurer and the City, as duly amended or supplemented from time to time in accordance with its terms.

“TIF Ordinance” means Ordinance No. 1379-09 passed by the Council of the City on October 9, 2009, as amended by Ordinance No. 673-2020 passed by the Council of the City on December 9, 2020.

“TIF Parcels” means some of the real property tax parcels described in the TIF Ordinance, and all parcels formed by the consolidation and split of that property, including, but not limited to, air rights parcels, as further described in the Cooperative Agreement.

“Trust Indentures” means, collectively, the Series 2021A Trust Indenture and the Series 2021B Trust Indenture.

“Trustees” means, collectively, the Series 2021A Trustee and the Series 2021B Trustee.

The captions and headings in this Bond Legislation are solely for convenience of reference and do not define, limit or describe the scope or intent of any provisions or Sections of this Bond Legislation. Words or terms used herein with initial capital letters and not defined herein shall have the meanings given to them in the Trust Indentures.

Section 2. Determinations by Legislative Authority. This Legislative Authority hereby determines that: (i) it is necessary and proper and in the best interest of the Port Authority to, and the Port Authority shall, issue, sell and deliver the Series 2021 Bonds in the maximum aggregate principal amount of \$60,000,000 at this time, as provided and authorized herein and in the Trust Indentures and pursuant to the authority of the Act, and as requested by the City and the Developer, all for the purpose of paying the costs of the Series 2021 Refinancing; (ii) the Refinanced Projects

constitute “port authority facilities” as defined in the Act, and is consistent with the purposes of the Act and Section 13 and Section 16 of Article VIII, Ohio Constitution; (iii) the utilization of the Refinanced Projects is in furtherance of the purposes of the Act and will enhance, foster, aid, provide and promote economic development, housing and commerce and will benefit the people of the State by creating and preserving jobs and employment opportunities and improving the economic welfare of the people of the State; and (iv) provision of the Series 2021 Refinancing requires the issuance, sale and delivery of the Series 2021 Bonds.

### Section 3. Terms and Provisions of the Series 2021 Bonds.

(a) Generally. The Series 2021 Bonds (i) shall be issued only in fully registered form; (ii) shall be exchangeable for Series 2021 Bonds of Authorized Denominations, as provided in the Trust Indentures; (iii) shall be numbered in such manner as determined by the Trustees in order to distinguish each Series 2021 Bond from any other Series 2021 Bond; (iv) shall be in Authorized Denominations, as set forth in the Certificates of Award; (v) shall be subject to optional, mandatory and mandatory sinking fund redemption in the amounts and at the times and prices set forth in the Certificates of Award and in the manner set forth in this Bond Legislation and upon the conditions set forth in the Trust Indentures; and (vi) shall be dated as of the date designated in the Certificate of Award. Each Series 2021 Bond shall bear interest, payable on the Interest Payment Dates, from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from its date.

The Series 2021A Bonds shall be designated “Cleveland-Cuyahoga County Port Authority Tax Increment Financing Revenue and Refunding Bonds, Senior Series 2021A (Flats East Bank Project)” and the Series 2021B Bonds shall be designated “Cleveland-Cuyahoga County Port Authority Tax Increment Financing Revenue and Refunding Bonds, Subordinate Series 2021B (Flats East Bank Project)”, or, in each case, as otherwise may be determined by the Executive or Fiscal Officer in the Certificates of Award.

(b) Book-Entry System. Notwithstanding any other provisions of this Bond Legislation or the Trust Indentures, if it is determined in the Certificates of Award that it is in the best interest of and financially advantageous to the Port Authority, the Series 2021 Bonds may be initially issued to a Depository for use in a Book-Entry System and, if and as long as a Book-Entry System is utilized, (i) the Series 2021A Bonds, the Series 2021B Bonds, or any other Series of Series 2021 Bonds may be issued in the form of a single, fully registered Bond representing each maturity and each interest rate within a maturity, and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (ii) except as otherwise provided in the Trust Indentures, the book entry interest owners of the Series 2021A Bonds, the Series 2021B Bonds, or any other Series of Series 2021 Bonds in Book-Entry Form shall not have any right to receive Series 2021 Bonds in the form of physical securities or certificates; (iii) ownership of book entry interests in the Series 2021A Bonds, the Series 2021B Bonds, or any other Series of Series 2021 Bonds in Book-Entry Form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of book entry interests shall be made only by book entry by the Depository and its Participants; and (iv) the Series 2021A Bonds, the Series 2021B Bonds, or any other Series of Series 2021 Bonds as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the Port Authority.

(c) Interest Rates and Principal Maturities. The Series 2021 Bonds shall bear interest at the annual rate or rates per year, payable on each Interest Payment Date (provided that the Certificate of Award may provide for a delay of not to exceed 12 months in the first Interest Payment Date), and shall mature and be subject to mandatory redemption on June 1 or December 1, or both, in the years and in the principal amounts, all as shall be set forth in the Certificate of Award; provided that no rate of interest therein specified shall exceed the maximum rate of interest allowed by law, the first payment of principal on Series 2021 Bonds shall be made not later than December 1, 2021 and all Series 2021 Bonds shall have been retired not later than December 1, 2055.

In the Certificate of Award for the Series 2021A Bonds, the Executive or Fiscal Officer shall fix the principal amount of the Series 2021A Bonds to be issued, which shall be the principal amount rounded to the next highest whole multiple of \$5,000, but not in excess of \$35,000,000, that will provide the moneys necessary to (A) pay the portion of the costs of the Series 2021 Refinancing not paid for with proceeds of the Series 2021B Bonds and any other Series of Series 2021 Bonds designated by the Executive or Fiscal Officer in the Certificate of Award; (B) make the deposits and payments required to meet the Series 2021A Debt Service Reserve Requirement; (C) pay capitalized interest, if any, on the Series 2021 Bonds to the extent not funded with the proceeds of the Series 2021B Bonds and any other series of Series 2021 Bonds designated by the Executive or Fiscal Officer in the Certificate of Award; and (D) pay costs of issuance of the Series 2021 Bonds, to the extent that those costs will be paid from the Series 2021A Bond proceeds. In the Certificate of Award for the Series 2021B Bonds, the Executive or Fiscal Officer shall fix the principal amount of the Series 2021B Bonds to be issued, which shall be the principal amount rounded to the next highest whole multiple of \$5,000, but not in excess of \$25,000,000, that will provide the moneys necessary to (A) pay the portion of the costs of the Series 2021 Refinancing not paid for with proceeds of the Series 2021A Bonds and any other Series of Series 2021 Bonds designated by the Executive or Fiscal Officer in the Certificate of Award; (B) make the deposits and payments required to meet the Series 2021B Debt Service Reserve Requirement; (C) pay capitalized interest, if any, on the Series 2021 Bonds to the extent not funded with the proceeds of the Series 2021A Bonds and any other series of Series 2021 Bonds designated by the Executive or Fiscal Officer in the Certificate of Award; and (D) pay costs of issuance of the Series 2021 Bonds, to the extent that those costs will be paid from the Series 2021B Bond proceeds.

The Certificates of Award shall fix the maturity or maturities and the mandatory, extraordinary and optional redemption provisions of the Series 2021 Bonds so as to provide to the Port Authority the lowest feasible interest cost but within the amount that is reasonably expected to be realized from payments under the Cooperative Agreement. The procedures, credits and conditions for the satisfaction of the mandatory sinking fund requirements shall be as set forth in the Trust Indentures. Other terms of the Series 2021 Bonds may be specified in the Certificate of Award. All matters determined in the Certificates of Award, as the same may be amended or supplemented, shall be conclusive and binding.

(d) Execution. The Series 2021 Bonds shall be signed by the Executive and the Fiscal Officer in their official capacities, provided that one or both of such signatures may be a facsimile.

Section 4. Sale of the Series 2021 Bonds; Disclosure Statements. The Series 2021 Bonds shall be awarded and sold to the Original Purchaser designated in the Certificate of Award at the



purchase price set forth in the Certificates of Award. The purchase price of the Series 2021A Bonds, expressed as a percentage of the principal amount of the Series 2021A Bonds, shall be established in the Certificate of Award, provided that such purchase price shall not be less than 96% of the principal amount of the Series 2021A Bonds as established in the Certificate of Award, subject to any further discount that would be original issue discount for federal income tax purposes, all as determined in the Certificate of Award, which determination shall be in the best interests of the Port Authority. The purchase price of the Series 2021B Bonds, expressed as a percentage of the principal amount of the Series 2021B Bonds, shall be established in the Certificate of Award, provided that such purchase price shall not be less than 96% of the principal amount of the Series 2021B Bonds as established in the Certificate of Award, subject to any further discount that would be original issue discount for federal income tax purposes, all as determined in the Certificate of Award, which determination shall be in the best interests of the Port Authority.

Any fees payable pursuant to the Bond Purchase Agreements in connection with the issuance and sale of the Series 2021 Bonds including may be paid from the proceeds of the Series 2021 Bonds which are hereby appropriated for that purpose.

The Executive and the Fiscal Officer are directed to make the necessary arrangements on behalf of the Port Authority to establish the date, location, procedure and conditions for the delivery of the Series 2021 Bonds to the Original Purchaser. Those officers are further directed to take all actions necessary to effect due execution, authentication and delivery of the Series 2021 Bonds under the terms of this Bond Legislation, the Bond Purchase Agreements, the Cooperative Agreement, and the Trust Indentures.

The distribution of one or more preliminary Disclosure Statements of the Port Authority, substantially in the form now on file with the Fiscal Officer, or if not now on file with the Fiscal Officer, substantially in the form customarily used by the Port Authority in connection with the issuance of revenue bonds similar to the Series 2021 Bonds, relating to the original issuance of the Series 2021 Bonds, but with modifications necessary to reflect the terms of the Series 2021 Bonds, is hereby approved, and the Executive, Fiscal Officer, and any other official of the Port Authority are each hereby authorized and directed to complete and may execute, on behalf of the Port Authority and in their official capacities, one or more final Disclosure Statements substantially in the form of the draft preliminary Disclosure Statements now on file with the Fiscal Officer or if not now on file with the Fiscal Officer, substantially in the form customarily used by the Port Authority in connection with the issuance of revenue bonds similar to the Series 2021 Bonds, with such modifications, changes, and supplements as are necessary or desirable for the purposes thereof as such officers shall approve. Such officers are authorized to certify or otherwise represent when each of the Disclosure Statements is to be “deemed final” (except for permitted omissions) by the Port Authority as of its date or is a final official statement if such certification is required by the Rule. Such officers are authorized to use and distribute, or authorize the use and distribution of, the preliminary Disclosure Statements and the final Disclosure Statements and any supplements thereto as so executed in connection with the issuance of the Series 2021 Bonds, and are each authorized and directed to advise the Original Purchasers in writing regarding limitations on the use of the preliminary Disclosure Statements and the final Disclosure Statements and any supplements thereto as the officer acting deems necessary or appropriate to protect the interests of the Port Authority. The Executive, the Fiscal Officer, and any other official of the Port Authority

are each authorized to execute and deliver, on behalf of the Port Authority and in their official capacities, such certificates in connection with the accuracy of the preliminary and final Disclosure Statements and any supplements thereto as, in their judgment, may be necessary or appropriate.

It is determined by this Legislative Authority that the price for and the terms of the Series 2021 Bonds, and the sale thereof, all as provided in this Bond Legislation, the Bond Purchase Agreements and the Trust Indentures, are in the best interests of the Port Authority and are in compliance with all legal requirements.

Section 5. Application of Proceeds of the Series 2021 Bonds. The Executive or the Fiscal Officer is authorized and directed to execute a certificate directing the proceeds of the Series 2021 Bonds to be deposited in the Funds, Accounts and Subaccounts for the Series 2021 Bonds established under the Trust Indentures and pursuant to the Cooperative Agreement and the Disbursing Agreement to make available the proceeds for the Series 2021 Refinancing. Disbursement and application of amounts deposited in those Funds, Accounts and Subaccounts, which may be deposited and held in a separate account by each Trustee if so determined in the Certificates of Award, shall be made in accordance with the Operative Documents. The proceeds of the Series 2021 Bonds are hereby appropriated for the purpose of paying costs of refinancing the Refinanced Projects, and also including, without limitation, providing funds to make the deposits and payments required to meet the Debt Service Reserve Requirement, and paying costs of issuance, including any Authority Annual Fee payable on the date of issuance of the Series 2021 Bonds.

Section 6. Security for the Series 2021 Bonds. As provided in the Trust Indentures, the Series 2021 Bonds shall be payable solely from the Pledged Revenues and the funds established under the Trust Indentures and shall be secured equally and ratably (i) by an assignment of and a lien on (A) the Special Funds, (B) the Pledged Revenues and (C) such collateral as may from time to time be assigned; provided, however, that any assignment of or lien on any fund, account, receivables, revenues, money or other intangible property not in the custody of the Trustees shall be valid and enforceable only to the extent permitted by law and (ii) by the Trust Indentures.

Nothing in the Bond Legislation, the Series 2021 Bonds or the Trust Indentures shall constitute a general obligation, debt or bonded indebtedness of the Port Authority; neither the general resources of the Port Authority shall be required to be used, nor the general credit of the Port Authority pledged, for the performance of any duty under this Bond Legislation, the Series 2021 Bonds or the Trust Indentures; and further, nothing therein gives the Holders of the Series 2021 Bonds, and they do not have, the right to have excises or taxes levied by this Legislative Authority, or by the State or the taxing authority of any other political subdivision, for the payment of principal of, redemption premium, if any, and interest on the Series 2021 Bonds, but the Series 2021 Bonds are payable solely from the Pledged Revenues and the funds established under the Trust Indentures as provided herein and in the Trust Indentures, and each Series 2021 Bond shall contain a statement to that effect; provided, however, that nothing in this Bond Legislation shall be deemed to prohibit the Port Authority, of its own volition, from using to the extent it is lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations of the Trust Indentures, this Bond Legislation or the Series 2021 Bonds.

The repayment of the Series 2021 Bonds will be made by Assigned Service Payments and, with respect to the Series 2021B Bonds, Minimum Service Payments, pursuant to the Cooperative Agreement. The relative rights and priorities of the Port Authority, the City, the Trustees, the Developer and The Huntington National Bank in the collateral with respect to the financing of the Project shall be set forth in the Cooperative Agreement and the Disbursing Agreement.

Section 7. Covenants of Port Authority. The Port Authority, by issuance of the Series 2021 Bonds, covenants and agrees with the Holders of the Series 2021 Bonds, that:

(a) Use of Proceeds. The Port Authority will use, or cause to be used, the proceeds of the Series 2021 Bonds to pay the costs of the Series 2021 Refinancing, including, without limitation, costs of issuance of the Series 2021 Bonds.

(b) Segregation of Funds. The Port Authority will segregate, for accounting purposes, the Project Revenues and the funds established under the Trust Indentures from all other revenues and funds of the Port Authority.

(c) Transcript of Proceedings. The Fiscal Officer, or other appropriate officer of the Port Authority, will furnish to the Original Purchaser and to the Trustees a true transcript of proceedings, certified by the Fiscal Officer or other officer, of all proceedings had with reference to the issuance of the Series 2021 Bonds, together with such information from the Port Authority's records as is necessary to determine the regularity and validity of such issuance.

(d) Further Actions and Delivery of Instruments. The Port Authority will, at any and all times, cause to be done all such further acts and things and cause to be executed and delivered all such further instruments as may be necessary to carry out the purpose of the Series 2021 Bonds and the Bond Legislation or as may be required by Sections 13 and 16, Article VIII of the Ohio Constitution of the State and will comply with all requirements of law applicable to the Series 2021 Bonds.

(e) Observance and Performance of Agreements and Obligations. The Port Authority will observe and perform all its agreements and obligations provided for by the Series 2021 Bonds, the Trust Indenture or this Bond Legislation. All of the obligations under this Bond Legislation and the Trust Indenture are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the Port Authority within the meaning of Section 2731.01, Ohio Revised Code.

(f) Arbitrage and Tax Compliance Provisions. The Port Authority covenants that it will restrict the use of the proceeds of the Series 2021 Bonds in such manner, as advised by Bond Counsel, and to such extent as may be necessary, to the extent of its authority and control, so that the Series 2021 Bonds will not constitute an arbitrage bond or hedge bond under Sections 141 through 150 of the Code. The Executive or the Fiscal Officer, or any other officer of the Port Authority having responsibility for the issuance of the Series 2021 Bonds, alone or in conjunction with the Developer or any officer, employee, agent of or consultant to the Developer, shall give an appropriate certificate of the Port Authority for inclusion in the transcript of proceedings for the Series 2021 Bonds setting forth the reasonable expectations of the Port Authority regarding the amount and use of all the proceeds of the Series 2021 Bonds, the facts, circumstances and estimates

on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Series 2021 Bonds.

The Port Authority covenants that it (i) will take, or require to be taken, to the extent of its authority and control, all actions that may be required of it, as advised by Bond Counsel, for the interest on the Series 2021 Bonds to be and remain excluded from gross income for federal income tax purposes and, with respect to the Series 2021 Bonds for which such treatment is avoidable, from treatment as an item of tax preference for purposes of the alternative minimum tax imposed on individuals under the Code, and (ii) will not take or authorize to be taken any actions that would, as advised by Bond Counsel, adversely affect that exclusion or, to the extent avoidable, cause interest to be treated as an item of tax preference. The appropriate officers of the Port Authority are hereby authorized and directed to take any and all actions and make or give such reports and certifications as may be appropriate to assure such exclusions of that interest.

In its performance of these covenants, and other covenants of the Port Authority pertaining to federal income tax laws, the Port Authority may rely upon the written advice of Bond Counsel.

Section 8. Operative Documents. To secure the payment of the Bond Service Charges on the Series 2021 Bonds as the same shall become due and payable and the performance by the Port Authority as provided in this Bond Legislation and in the Operative Documents to which it is a party, and to provide for the issuance and sale of the Series 2021 Bonds, the Executive and the Fiscal Officer, alone or together, are hereby authorized, for and in the name of the Port Authority and on its behalf and on behalf of this Legislative Authority, to execute the Operative Documents to which the Port Authority is a party in substantially the forms thereof now on file with the Fiscal Officer, with such changes therein as are not inconsistent with this Resolution and not materially adverse to the Port Authority and which are permitted by the Act and shall be approved by the officers executing those documents; provided, however, that any Operative Document the form of which is not now on file with the Fiscal Officer shall be in substantially the form previously delivered by the Port Authority in connection with the Authority's issuance of revenue obligations of the type represented by the Series 2021 Bonds, with such changes as are necessary to reflect the terms of the Series 2021 Bonds and their sale as set forth in this Bond Legislation and the term sheet now on file with the Fiscal Officer, including without limitation, any requirements of an Original Purchaser as are not materially adverse to the Port Authority and as are permitted by the Act and the Code, and which shall be approved by the officers executing those documents. The approval of changes to the Operative Documents, and that such changes are not materially adverse to the Port Authority, shall be conclusively evidenced by the execution of those documents by the officers of the Port Authority authorized to execute them.

Section 9. Other Agreements and Documents and Further Actions. The Executive and the Fiscal Officer, alone or together, are further authorized and directed to execute any certifications, financing statements, assignments, agreements and instruments, to accept on behalf of the Port Authority such additional security, and to take such further actions as are necessary or appropriate to effect the transactions contemplated in the Operative Documents and to consummate the transactions contemplated in this resolution and the Operative Documents and to undertake, complete and finance the Series 2021 Refinancing in accordance therewith, so long as such actions are not inconsistent with this Bond Legislation and not materially adverse to the Port Authority and are permitted by the Act and which shall be approved by the officers executing those

documents. Such officers are hereby further authorized to execute and deliver deeds and/or releases of property in connection with the termination or release of portions of the Project Site which have been previously leased to or owned by the Port Authority in connection with the Outstanding Bonds or the Refinanced Projects, together with any related documentation required to effect such deeds or releases. The determination that such actions and any documents executed pursuant to those actions are not materially adverse to the Authority shall be evidenced conclusively by the taking of those actions or execution of those documents by those officials. All actions heretofore taken by the officers and officials of the Authority and of this Legislative Authority in connection with the Series 2021 Refinancing and the financing thereof are hereby ratified and approved.

In addition, the Executive and the Fiscal Officer, alone or together, are further authorized and directed to execute any amendments, supplements or other documentation as shall be necessary and requested by an agency of the State of Ohio, the City of Cleveland or the County of Cuyahoga in connection with the refinancing of other debt of the Developer related to the Development.

Section 10. Retention of Counsel. The Authority has retained the law firm of Tucker Ellis LLP (“Tucker Ellis”) to provide legal services as the Port Authority's special counsel, which legal services are to be in the nature of legal advice and review of documents relating to the issuance of the Series 2021 Bonds and the consummation of the transactions related thereto. In rendering such legal services, as an independent contractor and in an attorney-client relationship, Tucker Ellis shall not exercise any administrative discretion on behalf of this Legislative Authority or the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county or cities or of this Legislative Authority, or the execution of public trusts. For such services, Tucker Ellis will be paid from the proceeds of the Series 2021 Bonds just and reasonable compensation and reimbursement of said out-of-pocket expenses, including, but not limited to, travel and duplicating expenses.

The Authority further acknowledges and agrees that the law firm of Bricker & Eckler LLP (“Bricker”) has been retained by the Developer to provide legal services as the Developer’s bond counsel, which legal services are to be in the nature of legal advice and preparation of documents relating to the issuance of the Series 2021 Bonds and the consummation of the transactions related thereto. For such services, Bricker will be paid from the proceeds of the Series 2021 Bonds just and reasonable compensation and reimbursement of said out-of-pocket expenses, including, but not limited to, travel and duplicating expenses.

Section 11. Severability. Each section of this Bond Legislation and each subdivision or paragraph of any section thereof is hereby declared to be independent and the finding or holding of any section or any subdivision or paragraph of any section thereof to be invalid or void shall not be deemed or held to affect the validity of any other section, subdivision or paragraph of this Bond Legislation.

Section 12. Compliance with Open Meeting Law. It is found and determined that all formal actions of this Legislative Authority concerning and relating to the adoption of this Bond Legislation were taken in an open meeting of this Legislative Authority, and that all deliberations

of this Legislative Authority and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

Section 13. Effective Date. This Bond Legislation shall be in full force and effect upon its adoption.

ADOPTED: July 15, 2021

Yeas: \_\_\_\_\_

\_\_\_\_\_  
CHAIR

Nays: \_\_\_\_\_

\_\_\_\_\_  
SECRETARY

Abstentions: \_\_\_\_\_

## **REAL ESTATE & DEVELOPMENT FINANCE COMMITTEE**

### ***Agenda Item 4(C)(1)(b) – Waverly & Oak Project***

#### ***Taxable Lease Revenue Bonds***

#### **Background**

The Cleveland-Cuyahoga County Port Authority (the “Port Authority”) has been asked to partner with Bond Street Group (“Bond Street”), aka Bond Street LLC through its affiliate 5506 Detroit, LLC (the “Developer” or the “Lessee”), on the acquisition of land and the construction of a mixed-use development comprised of apartments, retail and parking.

#### **The Development**

The Waverly & Oak Project is located on 1.38 acres and is situated at the gateway to the Gordon Square neighborhood. The proposed project consists of the construction of an approximately 179,000 square foot, 7 story building with 126 residential units, 17,300 square feet of ground floor retail/office space, and a 97 space below-grade parking garage (the “Project” or “Project Facility”) and is located at 5506 Detroit Avenue in Cleveland, Ohio (the “Project Site”).

To date, apartment construction in Gordon Square has consisted entirely of multifamily buildings without commercial uses, built blocks north of Detroit Avenue, leaving a gap in the market for mixed-use multifamily with an active commercial tenant mix in a highly walkable location. The Project has 300’ of frontage along the neighborhood’s main commercial corridor, and is a 10-minute walk to many of the best restaurants and entertainment venues in Cleveland.

The Developer is seeking a Tax Increment Financing (“TIF”) agreement through the City of Cleveland and a subordinate loan through Cleveland Development Advisors. The Project is expected to be completed in May of 2023.

#### **The Developer and Development Team**

Bond Street is a Cleveland-based owner/operator/developer whose focus is on revitalizing and activating neighborhoods through design-forward, people-centric properties. Bond Street’s focus is on livability, walkability, efficiency, diversity, and culture.

Todd Leebow is the founder and leads vision and direction for Bond Street and its projects. Mr. Leebow owns and operates Bond Street's hospitality partner - Kind Of One Concepts. He has been CEO of Majestic Steel USA since 2009 - owning and operating one of the largest domestic steel service centers and distributors in the world. Majestic Steel's real estate footprint spans the country, operating more than 1,000,000 SF nationwide. Mr. Leebow’s operating experience spans industrials, technology, real estate, and hospitality.

Justin Strizzi is a co-founder and managing partner of Bond Street and is responsible for all aspects of the development process and the ongoing management of Bond Street's portfolio. Mr. Strizzi has over eight years of commercial real estate experience in development and finance, transacting on over \$2 billion in commercial real estate across all major asset classes and domestic markets.

Taylor Hawkins has over 10 years of experience in commercial real estate, originating, structuring and closing over \$2 billion of complex debt and equity transactions across an array of asset classes

and markets. Taylor is a Principal and Senior Vice President of Bellwether Enterprise, one of the fastest growing commercial and multifamily real estate finance companies in the country. Taylor's experience also includes investments in multifamily and industrial properties, private equity real estate finance investments, and the management of 300 apartment units.

Harley Cohen is the founder and principal of Harlan + Associates, the Owner's Representative for the Project. Harley has more than 40 years of experience in construction and project management, and is responsible for managing the design assist process for the Waverly & Oak project. Harley has provided representation services, oversight, and consultation on more than \$1.58 billion of construction projects in the Greater Cleveland area - specializing in ground-up mixed-use and multifamily construction

### **Current Situation**

The Port Authority is being requested to provide up to \$45 million in taxable lease revenue bonds (the "Bonds") to pay a portion of the costs in connection with the Project. The Bonds are expected to be issued and privately placed by the Port Authority and will be purchased by a commercial lender (the "Lender") arranged by the Developer. In addition to the Bonds, the Developer will contribute approximately \$7.1 million of developer equity as necessary to complete the Project.

An estimated breakdown of the sources and uses of funds are as follows:

#### **Sources**

CCCPA Bonds/Bank Financing	\$ 37,684,914
Owner's Equity	7,142,869
Cleveland Development Advisors Subordinate Loan	2,791,345
<b>Total Sources</b>	<b>\$ 47,619,128</b>

#### **Uses**

Acquisition	\$ 2,571,930
Construction Hard Costs	39,200,801
Soft and Financing Costs	5,846,397
<b>Total Uses</b>	<b>\$ 47,619,128</b>

The Port will lease the Project Site and Project to the Lessee pursuant to a Lease Agreement (the "Lease"). The Lease will have a minimum 40-year term but can be terminated at Lessee's option after 5-years. Lessee will retain all ownership benefits for federal tax purposes and will purchase the Project from the Port Authority at the Lease termination for \$100.00 plus any costs associated with the transfer of the Project.

The Project will be constructed by the Developer through a construction manager agreement with the Port Authority. The Bonds will be issued in increments, as draw-down bonds to construct the Project.



The Lease will be a bondable capital lease with the Lessee or its affiliates or managers being responsible for all costs of maintaining, insuring and operating the Project. The rent payments will directly mirror the debt service payments on the Bonds plus any ongoing administrative fees and any other costs and expenses associated with the Bonds.

The primary source of repayment of the Bonds will be lease rental payments. The Bonds will be secured by a first leasehold mortgage and security interest in the Project. Lender will also receive a fee mortgage on the Project Site from Lessee, in its capacity as the owner of the Project Site. The Bonds will be non-recourse to the Port Authority.

The Developer has agreed to comply with the Port Authority's Inclusion and Prevailing Wage policies. The Developer has also agreed to allow a Port Authority Project Financing Sign to be prominently displayed during construction, communicating the Port Authority's involvement in the Project. The Port Authority will receive an estimated closing fee of \$185,000 after payment of closing costs.

**Recommendation**

***The Board of Directors is being requested to approve Resolution No. 2021-10 authorizing the issuance and sale of Taxable Lease Revenue Bonds, Series 2021, Waverly & Oak Project, totaling an amount up to \$45 million for the purpose of funding a portion of the costs associated with the acquisition Project Site and construction of the Project and authorizing the execution of all other associated financing documents necessary in relation thereto.***

RESOLUTION NO. 2021-10

A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$45,000,000 IN THE AGGREGATE PRINCIPAL AMOUNT OF CLEVELAND-CUYAHOGA COUNTY PORT AUTHORITY TAXABLE DEVELOPMENT LEASE REVENUE BONDS, SERIES 2021 (WAVERLY & OAK PROJECT) FOR THE PURPOSE OF PAYING OR REIMBURSING THE COSTS OF ACQUIRING, CONSTRUCTING, EQUIPPING, INSTALLING AND IMPROVING CERTAIN PORT AUTHORITY FACILITIES LOCATED IN THE CITY OF CLEVELAND, OHIO; AUTHORIZING THE ACQUISITION OF LEASEHOLD INTERESTS IN ONE OR MORE REAL ESTATE PARCELS BY GROUND LEASE; AUTHORIZING A LEASE TO PROVIDE FOR THE LEASING OF THOSE FACILITIES BY THE PORT AUTHORITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ASSIGNMENT OF A CONSTRUCTION MANAGER AGREEMENT, A BOND PURCHASE AGREEMENT, A MORTGAGE AND OTHER INSTRUMENTS, STATEMENTS AND DOCUMENTS IN CONNECTION WITH THE ISSUANCE AND SECURING OF THE BONDS; AND AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, the Cleveland-Cuyahoga County Port Authority (the “Issuer”), a body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the “State”), is authorized and empowered by virtue of the laws of the State including, without limitation, Section 13 of Article VIII, Ohio Constitution, and Sections 4582.01 to 4582.20, Ohio Revised Code (collectively, the “Act”), among other things, to (a) issue its revenue obligations for the purpose of financing a portion of the costs of acquiring, constructing, equipping, installing, renovating and otherwise improving “port authority facilities” as defined in the Act, such facilities comprising an approximately 179,000 square foot building consisting of approximately 126 market rate for-rent units with approximately 17,300 square feet of ground-level retail and office space and below-grade and surface level parking located at 5506 Detroit Avenue in the City of Cleveland, (b) enter into agreements to secure such revenue obligations, and to provide for the pledge or assignment of Revenues expected to be sufficient, together with other amounts provided therefor, to pay the principal of and interest and any premium on those revenue obligations, (c) acquire an interest in the Project Site by Ground Lease and acquire, construct, install, equip and otherwise improve such port authority facilities and to lease those facilities and provide for their use in industry, commerce, research, distribution, and economic development, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the County of Cuyahoga and the State, (d) to mortgage and assign its rights with respect to its interest in leases and rents from the port authority facilities so acquired, constructed, equipped, installed, renovated or otherwise improved to provide further security for such revenue obligations, (e) approve the manner for contracting for the acquisition, construction, installation, equipping,

renovation and improvement of such port authority facilities, and (f) enter into such agreements as may be necessary or convenient to implement the activities identified in this preamble; and

WHEREAS, pursuant to the foregoing authority and at the request of 5506 Detroit, LLC, this Board has determined to authorize the activities described in this Resolution; and

WHEREAS, this Board has determined it necessary and proper and in the best interest of the Issuer to issue the Bonds (as hereinafter defined) at this time and enter into agreements providing for the development and financing of the Project, including the manner for the construction and renovation thereof, and the leasing of the Project to the Lessee to be used in industry, commerce, research and distribution, and creating or preserving jobs to promote economic development, all as authorized by the Act.

NOW, THEREFORE, Be It Resolved by the Board of Directors of the Cleveland-Cuyahoga County Port Authority:

Section 1. Definitions. In addition to the words and terms elsewhere defined in this Resolution, or by reference to the Lease, unless the context or use indicates clearly another meaning or intent:

“Act” means Sections 4582.01 to 4582.20, inclusive, Ohio Revised Code, as enacted and amended from time to time pursuant, in part, to Section 13 of Article VIII of the Ohio Constitution.

“Bond Advance” means an advance of proceeds of the Bonds paid by the Original Purchaser to pay costs of the Project.

“Bond Legislation” means this Resolution, including without limitation, any Certificate of Award contemplated herein, all as duly amended or supplemented from time to time.

“Bond Purchase Agreement” means the Bond Purchase Agreement between the Issuer and the Original Purchaser as authorized by Section 4 of this Resolution to be completed and executed by the Executive or the Fiscal Officer, determining such terms, details or other matters pertaining to the Bonds, their issuance, sale or delivery, as are directed hereby to be determined in that agreement.

“Bond Register” means all books and records necessary for the registration, exchange and transfer of the Bonds as provided in Section 5.

“Bond Registrar” means the Fiscal Officer or the Executive designated as the Bond Registrar in the Certificate of Award, as registrar, paying agent and authenticating agent for the Bonds.

“Bond Service Charges” means, for any period or date, the principal of and premium, if any, and interest on the Bonds accruing for that period or due and payable on that date.

“Bonds” means Cleveland-Cuyahoga County Port Authority Taxable Development Lease Revenue Bonds, Series 2021 (Waverly & Oak Project) in the maximum principal amount of \$45,000,000 which have been authorized by this Resolution.

“Certificate of Award” means the Certificate of Award executed by the Executive or the Fiscal Officer upon the sale of the Bonds setting forth the terms and conditions thereof.

“Construction Manager Agreement” means the Construction Manager Agreement between the Issuer and the Lessee, as construction manager, as the same may be amended and supplemented from time to time in accordance with its terms.

“Executive” means the President of the Issuer or Chair of the Legislative Authority or Vice-Chair of the Legislative Authority if the Chair is unavailable or, if those positions are vacant or their incumbents are unavailable, absent or incapacitated, any officer of the Issuer.

“Fiscal Officer” means the Secretary or an Assistant Secretary of the Issuer, or, if any of those positions is vacant or its incumbent is unavailable, absent or incapacitated, any officer of the Issuer.

“Ground Lease” means the Ground Lease from Lessee of the Project Site, as lessor to the Issuer dated as of the date of closing of the Bonds, as the same may be amended and supplemented from time to time in accordance with its terms.

“Holder” means the person in whose name the Bonds are registered on the Bond Register.

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

“Issuer Documents” means the Bond Legislation, the Ground Lease, the Lease, the Bond Purchase Agreement, the Construction Manager Agreement, the Mortgage and any other instruments or documents entered into by the Issuer to consummate the transactions contemplated by the foregoing documents.

“Lease” means the Lease of the Project from the Issuer to Lessee dated as of the date of closing of the Bonds, as the same may be amended and supplemented from time to time in accordance with its terms.

“Legislative Authority” or the “Board” means the Board of Directors of the Issuer.

“Lessee” means 5506 Detroit, LLC, or its affiliates, successors or assigns.

“Mortgage” means an open-end fee and/or leasehold mortgage, or any joinder thereto, delivered by the Issuer to the Original Purchase in the form requested by the Original Purchaser.

“Original Purchaser” means the original purchaser designated in the Certificate of Award

“Port Authority Facilities” or “port authority facilities” means port authority facilities as defined in the Act.

“Project” means the acquisition, construction, equipping, installation, renovation and improvement of an approximately 179,000 square foot building consisting of approximately 126 market rate for-rent units with approximately 17,300 square feet of ground-level retail and office space and below-grade and surface level parking located at 5506 Detroit Avenue in the City of Cleveland pursuant to the Construction Manager Agreement and constituting port authority facilities under the Act

“Project Facilities” shall have the meaning defined in the Lease.

“Project Purposes” means providing funds for the acquisition, construction, installation, equipping, and improvement of the Project for use in industry, commerce, research and distribution and for use as economic development facilities to be held under the Ground Lease by the Issuer and leased to and operated by the Lessee.

“Project Site” shall have the meaning defined in the Lease.

“Purchase Price” means the amount specified as in the Bond Purchase Agreement.

“Rental Payments” means such term as defined in the Lease.

“Revenues” means (a) the Rental Payments made by, and monies received from, the Lessee under, or with respect to, the Lease and (b) all other moneys received or to be received by the Issuer from the lease, sale or other disposition of the Project, other than Unassigned Issuer’s Rights.

“State” means the State of Ohio.

“Unassigned Issuer Rights” means such term as defined in the Lease.

The captions and headings in this Resolution are solely for convenience of reference and do not define, limit or describe the scope or intent of any provisions or Sections of this Resolution.

Section 2. Findings and Determinations; Authorization of Bond. This Legislative Authority determines that:

(i) it is necessary and proper and in the best interest of the Issuer to, and the Issuer shall, issue, sell and deliver the Bonds in maximum principal amount not to exceed \$45,000,000, as provided and authorized herein and pursuant to the authority of the Act, for the purpose of paying or reimbursing costs of, the Project for the Project Purposes;

(ii) any funds to pay costs and expenses incurred in connection with the issuance of the Bonds shall be paid by the Lessee, through the title company for the Project or by equity deposit of the Lessee, for payment at closing;

(iii) the Project Facilities constitute “port authority facilities” as defined in the Act and is consistent with the purposes of the Act;

(iv) the utilization of the Project is in furtherance of the purposes of the Act and will benefit the people of the State and the Issuer by (A) creating jobs and employment opportunities and improving the economic welfare of the people of the State and the Issuer and (B) promoting industry and commerce; and

(v) provision of the Project will require the issuance, sale and delivery of the Bonds.

Section 3. Terms and Provisions of the Bonds. The Bonds shall be issued as one or more series of bonds only in fully registered form, shall be issued in denomination or denominations requested by the Original Purchaser and shall be dated as of the date of issuance of the Bonds as set forth in the Certificate of Award and in accordance with the following terms and provisions:

(a) Principal Amount; Bond Advances; Payment Dates. The maximum aggregate principal amount of the Bonds, which will provide the moneys necessary, together with other moneys available or to be available therefor, to reimburse or pay costs of the Project, together with those amounts required to make the deposits and payments required by the Lease and the Construction Manager Agreement to be made from proceeds of the Bonds shall be such amount as determined in the Certificate of Award, but in no event shall such principal amount exceed \$45,000,000. The principal amount of the Bonds shall be the aggregate amount advanced from time to time as Bond Advances delivered by the Original Purchaser in accordance with the Bond Purchase Agreement and the Certificate of Award. The principal amount of the Bonds shall be payable in the amounts and on the dates set forth in the Bonds.

(b) Maturity Date. The Bonds shall mature on the maturity date set forth in the Certificate of Award; provided, the maximum maturity date shall not exceed 30 years.

(c) Interest; Payment Dates. The Bonds shall bear the rate or rates of interest per year set forth in the Bonds, not exceeding 12% per year, and shall be payable on the payment dates set forth in the Bonds. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for, or, if no interest has been paid or provided for, from their date.

(d) Redemption and Tender. The Bonds shall be subject to prior redemption and tender as set forth in the Certificate of Award.

(e) Certificate of Award. On or before the date of issuance of the Bonds, the Executive or the Fiscal Officer shall execute and deliver a Certificate of Award on behalf of the Issuer establishing such terms of the Bonds as set forth in this Section 3 and as otherwise required by this Resolution. All matters determined in the Certificate of Award shall be conclusive and binding.

Section 4. Sale of the Bonds. The Bonds shall be sold and awarded to the Original Purchaser for the Purchase Price, in accordance with this Resolution, the Certificate of Award and the Bond Purchase Agreement. It is hereby determined that the Purchase Price and the manner of sale and the terms of the Bonds, as provided in the this Resolution, the Certificate of Award and

the Bond Purchase Agreement, are consistent with all legal requirements and will carry out the public purposes of the Act.

The Executive and the Fiscal Officer are authorized and directed, alone or together, to make the necessary arrangements with the Original Purchaser to establish the date, location, procedures and conditions for the delivery of the Bonds to the Original Purchaser and to take all steps necessary to effect due execution, authentication and delivery of the Bonds to the Original Purchaser under the terms of the Bond Legislation and the Bond Purchase Agreement.

#### Section 5. Transfer and Exchange.

(a) Bond Register. So long as any of the Bonds remain outstanding, the Bond Registrar shall maintain and keep the Bond Register at the principal office of the Issuer on which the accurate record of the names and addresses of the registered owners of the Bonds shall be maintained. The person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of the Bond proceedings. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the Issuer nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section. All such payments shall be valid and effectual to satisfy and discharge the Issuer's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

(b) Transfer and Exchange. Any Bond may be exchanged for Bonds of any denomination or denominations requested by the Holders upon presentation and surrender to the Bond Registrar at the principal office of the Issuer. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond to the Bond Registrar at the principal office of the Issuer together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Notwithstanding the foregoing, no Bond may be transferred unless the Holder requesting such transfer first delivers to the Issuer and the Bond Registrar an opinion of counsel selected by the Holders and acceptable to the Issuer that such transfer does not violate the Securities Act of 1933 and the Indenture Act of 1939, as amended, and the regulations issued pursuant thereto. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any denomination or denominations requested by the Holders equal in the aggregate to the unmatured principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the Issuer are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the Issuer. In all cases of Bonds exchanged or transferred, the Issuer shall sign and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Resolution. The exchange or transfer shall be without charge to the owner, except that the Issuer and the Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The Issuer or the Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All

Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the Issuer, evidencing the same debt, and entitled to the same security and benefit under the Bond proceedings as the Bonds surrendered upon that exchange or transfer. Neither the Issuer nor the Bond Registrar shall be required to make any exchange or transfer of any Bond selected for redemption, in whole or in part.

(c) Lost, Mutilated or Destroyed Bonds. The Bond Registrar shall complete, authenticate, deliver and register new Bonds to replace Bonds lost, stolen, destroyed or mutilated upon receiving written instructions from the President to do so together with evidence of indemnification of the Issuer by the Holder(s) thereof in a form satisfactory to the Issuer.

Section 6. Allocation of Proceeds of the Bonds. The proceeds of the Bonds shall be advanced by the Original Purchaser to the Issuer pursuant to the terms of the Bonds, the Bond Purchase Agreement and the Certificate of Award and used to pay costs of the Project in accordance with the terms of the Construction Manager Agreement and the Certificate of Award.

Section 7. Security for the Bonds. The Bond Service Charges on the Bonds shall be equally and ratably payable solely from the Revenues. The Issuer hereby absolutely and irrevocably pledges and assigns to and grants a lien in favor of, the Holders of the Bonds all of its right, title and interest in and to the Revenues for the payment of the Bond Service Charges. Pursuant to the Act, the pledge and assignment of, and lien on, the Revenues shall be valid and binding from the date of the issuance of the Bonds and the Revenues so pledged and hereafter received by the Issuer are immediately subject to such pledge, assignment and lien without any physical delivery thereof or further act, and the pledge, assignment and lien is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer, irrespective of whether those parties have notice thereof. The Issuer shall record this Resolution in its records.

Nothing in this Resolution or the Bonds shall constitute a general obligation, debt or bonded indebtedness of the Issuer; neither the general resources of the Issuer shall be required to be used, nor the general credit of the Issuer pledged, for the performance of any duty under this Resolution and the Bonds; and further, nothing herein or therein gives the Holder of the Bonds, and it does not have, the right to have excises or taxes levied by this Board, the Council of the City of Cleveland or the County of Cuyahoga, Ohio or by the State or the taxing authority of any other political subdivision, for the payment of principal of, redemption premium, if any, and interest on the Bonds, but the Bonds are payable from the Revenues pledged and assigned as provided herein, and the Bonds shall contain a statement to that effect; provided, however, that nothing herein or in this Resolution shall be deemed to prohibit the Issuer, of its own volition, from using to the extent it is lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations of this Resolution or the Bonds.

Section 8. Covenants and Agreements of Issuer. In addition to the other covenants of the Issuer herein and in the Issuer Documents, the Issuer further covenants and agrees as follows:

(a) Authority and Actions. The Issuer is, and upon delivery of the Bonds will be, duly authorized by the laws of the State, particularly and without limitation the Act, to issue the Bonds,



to execute and deliver the Issuer Documents and other instruments and documents to which it is a party, and to provide the security for payment of the Bond Service Charges on the Bonds in the manner and to the extent set forth in this Resolution, all as authorized by this Legislative Authority. All actions on the part of the Issuer for the issuance of the Bonds and the execution and delivery of the Issuer Documents and such other instruments and documents as are authorized herein have been or will be duly and effectively taken. The Bonds will be a valid and enforceable special obligation of the Issuer according to their terms.

(b) Further Assurances. Each duty of the Issuer and of its officers and employees undertaken pursuant to the Bonds and the Issuer Documents is a duty specifically enjoined by law and resulting from an office, trust or station of the Issuer, within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

Section 9. Issuer Documents. To provide for the issuance and sale of the Bonds and the consummation of the transactions contemplated herein, the Executive, the Fiscal Officer, any member of the Legislative Authority and any other appropriate officer of the Issuer, alone or in conjunction with any of the foregoing, are authorized and directed to execute, acknowledge and deliver, for and in the name and on behalf of the Issuer, each Issuer Document in substantially the respective forms thereof submitted to this Legislative Authority or if not on file, in a form utilized in similar transactions approved by the Board, which is approved subject to changes to reflect the priority and/or Project relating to such Bonds.

The Issuer Documents are approved with any changes which are not inconsistent with this Resolution, which are not substantially adverse to the Issuer, which are permitted by the Act, and which are approved by the officer or officers executing the respective Issuer Documents. The approval of those changes by the officer or officers and the character of those changes as not being substantially adverse to the Issuer shall be evidenced conclusively by the execution and delivery of the respective Issuer Documents by the officer or officers.

Section 10. Other Documents. The Executive, the Fiscal Officer, any member of the Legislative Authority and any other appropriate officer of the Issuer, alone or in conjunction with any of the foregoing, are authorized and directed to execute, deliver and, if applicable, file for and in the name and on behalf of the Issuer, any certifications, financing statements, assignments, mortgages and other instruments and documents which are necessary or appropriate to consummate the transactions contemplated in the Issuer Documents and the Bonds. Those certifications and other instruments and documents include, without limitation, certifications by the Executive or the Fiscal Officer of the transcript of proceedings relating to the issuance of the Bonds.

Section 11. Acquisition of Project Site by Ground Lease. The Issuer is hereby authorized to acquire a leasehold interest in the Project Site by the Ground Lease as provided herein and in the Ground Lease on file with the Legislative Authority.

Section 12. Construction. It is hereby determined by the Board that the construction of the Project and of any improvements in connection with it, to the extent that the proceeds of the Bonds are used therefor, has been and shall continue to be undertaken by the Issuer in the manner

provided in the Lease and Construction Manager Agreement. The Board hereby approves the appointment of the Lessee as its agent under the Construction Manager Agreement for the Project Purposes. In addition, the Executive, the Fiscal Officer or any member of the Board, alone or together, in order to provide for the Project, are authorized and directed to execute and deliver, for and in the name of the Issuer and on its behalf, subject to the certification of availability of funds therefor from proceeds of the Bonds, and from other monies available or to be available to pay costs of the Project, and after approval of the form thereof in accordance with the Construction Manager Agreement, such contracts and agreements (collectively, "Construction Agreements") as may be necessary for the Project.

Based on information furnished to it, this Board has determined that the manner in which the Construction Agreements for the Project should be made is to negotiate the terms of those construction agreements, and this Board hereby finds and determines that such negotiation best carries out the public purpose to be fulfilled by the Project.

Section 13. Severability. Each section of this Resolution and each subdivision or paragraph of any section hereof and each sentence of a paragraph hereof is hereby declared to be independent and the finding or holding of any section or any subdivision, paragraph or sentence hereof to be invalid or void shall not be deemed or held to affect the validity of any other section, subdivision, paragraph or sentence of this Resolution.

Section 14. Retention of Counsel. The Authority has retained the law firm of Roetzel & Andress, LPA to provide legal services as bond counsel which legal services are to be in the nature of legal advice and preparation of documents relating to the issuance of the Bonds and the consummation of the transactions related thereto. In rendering such legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this Legislative Authority or the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county or cities or of this Legislative Authority, or the execution of public trusts. For such services, said firm will be paid from funds provided by the Lessee in connection with the issuance of the Bonds just and reasonable compensation and reimbursement of said out-of-pocket expenses, including, but not limited to, travel and duplicating expenses.

Section 15. Compliance with Open Meeting Law. It is found and determined that all formal actions of this Legislative Authority concerning and relating to the adoption of this Resolution were taken in an open meeting of this Legislative Authority, and that all deliberations of this Legislative Authority and of any of its committees or subcommittees, or any other public bodies of the Authority, that resulted in such formal actions, were in meetings open to the public, in compliance with the law.

Section 16. Effective Date. This Resolution shall be in full force and effect upon its adoption.

Adopted: July 15, 2021

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CHAIR

Yeas: \_\_\_\_\_

Nays: \_\_\_\_\_

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SECRETARY

Abstentions: \_\_\_\_\_

## **MARITIME COMMITTEE**

### ***Agenda Item 4(C)(2)(a) – Sediment Processing & Management Facility 2021 General Site Maintenance & Capital Improvement Project***

#### **Background**

The Port Authority's Sediment Processing & Management Facility ("Facility"), on the surfaces of CDF's 9 & 12, is Cleveland's only facility designed and permitted to both permanently retain and beneficially harvest qualifying dredge sediment to support maritime commerce. This facility provides upland dredge sediment placement capacity to the U.S. Army Corp of Engineers and private users along the Cuyahoga River and in within Cleveland Harbor. Since 2015 the Facility has received more than 1.3M cubic yards of dredge sediment, of which 60% has been beneficially harvested to preserve limited capacity that remains. The Port Authority's site operation and beneficial use model is anticipated to provide upland dredge placement capacity in Cleveland for the next 10+ years and remains a critical element to Cleveland's Dredge Material Management Plan.

Material that qualifies for hydraulic delivery as part of the navigation channel's biannual dredging contract is dewatered, excavated, stockpiled, tested, and moved outbound from the Facility for beneficial use. The dredge sediment is screened and blended to make manufactured topsoil products and/or used as general backfill on various types of Projects throughout the County. This work is contracted to Kurtz Brothers, Inc. through an ongoing Site Operation Agreement partnership. This is an equipment and logistics heavy process that results in a significant amount of wear and tear to the Facility. The last major site maintenance and/or capital improvements work was performed in 2018.

In 2020, the Port Authority allocated funds in our Operating and Capital budgets and undertook planning and design work necessary to support the advancement of a site maintenance and capital improvement Project in 2021. In the spring of 2021, a portion of the scope of work was pulled from the Project's scope at the request of the City of Cleveland's Department of Port Control and the Federal Aviation Administration. This included the pavement of the main access road in and out of the Facility and the installation of a truck wash station to mitigate the tracking of material out onto the public right of way. The \$600K+ in grant funding the Port Authority was awarded in 2020 to execute this work and the scope were pulled from the Project. The preserved scope of work includes grading of water handling ponds to limit standing water, the scraping and resurfacing of compacted aggregate primary hall routes, maintenance and hardening of existing water control structures, and modifications to existing water control structures in primary support of hydraulic dredge sediment delivery and beneficial use operations.

#### **Current Situation**

The Port Authority publicly advertised the 2021 Sediment Processing & Management Facility General Maintenance Project on June 22, 2021. The Port Authority received a single bid on July 8<sup>th</sup>, 2021. The bid was closely reviewed against the engineer's estimate, Port Authority's budget, and the bid submission requirements. The bid received from Mark Haynes Construction, Inc. in the amount of \$616,000.00 was determined to be fully responsive and responsible. An additional \$30,800 in Port Authority controlled contingency is being requested to cover additional costs any unforeseen conditions.

**Recommendation**

*The Board of Directors is being requested to adopt Resolution No. 2021-11 authorizing and approving the Port Authority to enter into a contract with Mark Haynes Construction, Inc. for an amount not to exceed \$646,800.00, including \$30,800 of Port Authority controlled contingency, for the purposes of performing general site maintenance and capital improvements at the Port of Cleveland's Sediment Processing and Management Facility and authorizing the expenditure of funds from monies that have been appropriated in the FY 2021 Operating & Capital Budgets.*

## RESOLUTION NO. 2021-11

A RESOLUTION AUTHORIZING AND APPROVING THE PORT AUTHORITY TO ENTER IN TO A CONTRACT WITH MARK HAYNES CONSTRUCTION, INC. FOR AN AMOUNT NOT TO EXCEED \$646,800.00, INCLUDING \$30,800 OF PORT AUTHORITY CONTROLLED CONTINGENCY, FOR THE PURPOSES OF PERFORMING GENERAL SITE MAINTENANCE AND CAPITAL IMPROVEMENTS AT THE PORT AUTHORITY'S SEDIMENT PROCESSING & MANAGEMENT FACILITY AND AUTHORIZING THE EXPENDITURE OF FUNDS FROM MONIES THAT HAVE BEEN APPROPRIATED IN THE FY 2021 OPERATING & CAPITAL BUDGETS.

WHEREAS, the Port Authority requires the advancement of a scope of work which includes the scraping and resurfacing of the primary compacted aggregate haul routes and access roadway leading to and from the of the Sediment Processing & Management Facility on the surfaces of CDF 9 & 12 (the "Site"), re-armoring of wear surfaces withing the water handling ponds, site work to reduce the amount of standing water, and repairs and to the weir structures (the "Project"); and

WHEREAS, the Project will allow the Port Authority to sustain the hydraulic receipt of Federal and private dredge sediment into CDF 9 and permit the processing of dredge sediment outbound for beneficial use through its Site Operator Agreement with Kurtz Brothers, Inc.; and

WHEREAS, the Project must be complete in advance of the 2021 fall dredge cycle, which is presently scheduled to commence in October; and

WHEREAS, the Port Authority has coordinated with the City of Cleveland's Department of Port Control and with their cooperation, previously obtained the necessary Federal Aviation Administration 7460 Airspace Determinations to advance the Project; and

WHEREAS, detailed engineering plans, specifications and bid documents were prepared and made available consistent with Port Authority procurement and bidding policies; and,

WHEREAS, the Port Authority staff completed a competitive bidding process pursuant to Ohio Revised Code §4582.12 to solicit, receive and review bids to perform the services for the Project, and a single responsive and responsible bid was received; and

WHEREAS, the Port Authority staff recommends approval of the bid presented by Mark Haynes Construction, Inc. in the amount of \$616,00 with a 5% Owner controlled contingency in an amount of \$30,800 to the cover additional costs unforeseen conditions; and

WHEREAS, the Port Authority included funding in the FY 2021 Capital & Operating Budgets for the advancement of the Project which represents the total anticipated funds required to construct this Project; and

NOW, THEREFORE, BE IT RESOLVED by the Cleveland- Cuyahoga County Port Authority Board of Directors, Cleveland, Ohio:

Section 1. It is found and determined that: (1) the actions of the President and staff of the Port Authority in soliciting, receiving and reviewing bids for the Project in the manner provided in O.R.C. §4582.01 through 4582.20 and in accordance with the plans and specifications on file with the Port Authority are hereby authorized, approved and ratified; (2) the bid of Mark Haynes Construction, Inc. (the “Company”) in the amount of \$616,000.00 is the lowest responsive and responsible bid submitted for the Project and is in proper form in full compliance with the specifications and with the notice inviting bids and that such bid is hereby accepted; (3) a \$30,800 Port-controlled contingency (5%) will be added to cover additional costs related to unforeseen conditions; and (3) the total contract value shall not exceed \$646,800.00.

Section 2. That the President, Chair, Vice Chair, Secretary or Assistant Secretary are and each of them is authorized and empowered for and on behalf of the Port Authority and in its name and on behalf of the Board to enter into a written contract with the Company for the Project (the “Agreement”) substantially in the form contained in the bid documents and upon such other terms and conditions in the Agreement which shall not be materially adverse to the Port Authority which shall be approved by the officer or officers executing such Agreement and any related documents. The approval of such changes and that such changes are not materially adverse to the Port Authority shall be conclusively evidenced by execution of the Agreement and related documents by those officials.

Section 3. That funds for the Project are available from funds previously appropriated by the Board for Operating & Capital Expenditures and are hereby authorized for an amount of \$616,000 plus a Port Authority contingency of up to an additional \$30,800.00.

Section 4. That all formal actions of the Board of Directors of the Cleveland Cuyahoga County Port Authority concerning and relating to the adoption of this Resolution were adopted in an open meeting of the Board of Directors and that all deliberations of this Board of Directors and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 5. That this Resolution shall take effect immediately upon its adoption.

ADOPTED: July 15<sup>th</sup>, 2021

Yeas: \_\_\_\_\_

Nays: \_\_\_\_\_

Abstentions: \_\_\_\_\_

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CHAIR

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SECRETARY

## **MARITIME COMMITTEE**

### ***Agenda Item 4(C)(2)(b) – General Cargo Terminal Dock 24 & 26 Master Modernization & Rehabilitation Project: Multiple Authorizations***

#### **Background**

In 2018, the Port Authority performed a comprehensive above and below the waterline maritime infrastructure condition assessment of the General Cargo Terminal. This inspection used state of the art underwater scanning and imagery technology to assess the present condition of the existing sheet pile bulkheads with support of manned, underwater dive inspections to supplement and verify the findings of the scanning equipment. The inspection found Dock 26W to be structurally compromised below the water line, requiring it to be immediately taken out of service, and reaffirmed the surface infrastructure and marine appurtenances on Dock 24 needed significant modernization and rehabilitation.

With authorization from the Port Authority's Board, the Port Authority staff entered into a design engineering services contract with Johnson, Mirmiran, and Thompson, Inc. for design engineering services related to the reconstruction of Dock 26W and its associated surface infrastructure and marine appurtenances. The engineering services contract was amended in 2020 to add the Dock 24 surface infrastructure and marine appurtenances with Board approval. Construction was scheduled to commence once funding was secured to support Port Authority funds with the goal of getting Dock 26W back in service as soon as possible. Since the authorization and amendment of the engineering services contract, Port Authority staff has been working closely with the engineer to complete the design, development of contracting documentation, obtain permits, and secure funding for the Project.

#### **Current Situation**

The Port Authority submitted an \$11 million Port Infrastructure Development Program Grant ("PIDP") application with the United States Department of Transportation Maritime Administration ("MARAD") in 2019 to support a single project to reconstruct the General Cargo Terminal's Dock 26W and rehabilitate and modernize Dock 24. On February 14<sup>th</sup>, 2020, the Port Authority was formally notified that it was successful with this grant application. The \$11 million in PIDP funds will support and fund 55% of the Project's construction costs. Port Authority staff has been working with MARAD to program and environmentally clear the Project.

In 2020, Port Authority submitted an Ohio Maritime Assistance Program grant application to reduce the local funding gap required to advance the Port of Cleveland's Dock 24 and 26 Master Modernization Project. This statewide competitive program is administered by the Ohio Department of Transportation ("ODOT"). The Port Authority was successful in securing \$7,495,213.00 to support the Project. There is a 50% minimum match on Maritime Assistance Program funds. Match funds for the Project are being provided by the Port Infrastructure Development Program Grant.

In May, the Port Authority received authorization to advance the Project into procurement from MARAD and the ODOT. The Port Authority publicly advertised the Project's construction contract on May 25<sup>th</sup>, 2021. The Project primarily consists of the full reconstruction of Dock 26W and major rehabilitation to Dock 24. Formal bids were received from 6 contractors on Thursday,



July 1<sup>st</sup>, 2021. The Port Authority carefully reviewed the bids. The bid submitted by the Great Lakes Construction Company, with a base bid in the amount of \$19,927,002.75 was determined to be the lowest, responsive, and responsible bid. The Port Authority's staff recommends and requests carrying an additional \$996,350.00 (5%) of contingency funds for unforeseen conditions.

In parallel with the construction, the Port Authority publicly requested Letters of Interest ("LOI") from qualified construction inspection firms. The Port Authority received LOI from three qualified construction administration and inspection service firms. In similar fashion to processes the Ohio Department of Transportation uses to evaluate the qualifications of construction administration firms and inspectors, the Port Authority established scoring criteria and a qualifications-based selection process to evaluate proposals. The proposal submitted by KS Associates, Inc. (FBE) in partnership with Intertek-PSI was deemed the most qualified firm. Subsequently, the Port Authority negotiated a final scope of work for this project and an associated not to exceed contract dollar amount of \$423,466.00, which will be billed at an agreed upon fee schedule incorporated into the contract.

**Recommendation A: General Cargo Terminal Dock 24 & 26 Master Modernization & Rehabilitation Port Infrastructure Development Program Grant**

*The Board of Directors is being requested to approve Resolution 2021-12 authorizing the Port Authority to:*

- 1) Ratify and accept the Port Infrastructure Development Program (PIDP) grant funding in the amount of \$11,000,000.00.*
- 2) Authorize and approve the execution of a grant agreement with the U.S. Department of Transportation Maritime Administration for the Dock 24 & 26 Master Modernization & Rehabilitation Project.*

**Recommendation B: General Cargo Terminal Dock 24 & 26 Master Modernization & Rehabilitation Ohio Maritime Assistance Program Grant**

*The Board of Directors is being requested to approve Resolution 2021-13 authorizing the Port Authority to:*

- 1) Ratify and accept Ohio Maritime Assistance Program (MAP) grant funding in the amount of \$7,495,213.00.*
- 2) Authorize and approve the execution of a Local-Let Project Administration Agreement with the Ohio Department of Transportation for the Dock 24 & 26 Master Modernization & Rehabilitation Project.*

**Recommendation C: General Cargo Terminal Dock 24 & 26 Master Modernization & Rehabilitation Project Construction Contract**

*The Board of Directors is being requested to adopt Resolution 2021-14 authorizing and approving the Port Authority to enter into a contract with the Great Lakes Construction Company for an amount not to exceed \$20,923,352.75, including \$996,350.00 of Port Authority controlled contingency, for the purposes of modernizing & rehabilitating Docks 24 & 26W, and authorizing the expenditure of funds from monies that have been appropriated in the FY 2021 capital budget and funds to be included in the 2022 & 2023 capital budgets.*

**Recommendation D: General Cargo Terminal Dock 24 & 26 Master Modernization & Rehabilitation Project Inspection Professional Services Agreement**

*The Board of Directors is being requested to adopt Resolution 2021-15 authorizing and approving the Port Authority to enter into a professional services agreement with KS Associates, Inc. for an amount not to exceed \$423,466.00, for the purposes of providing construction administration and inspection services on the Dock 26 & 26 Master Modernization & Rehabilitation Project and authorizing the expenditure of funds from monies that have been appropriated in the FY 2021 capital budget and funds to be included in the 2022 & 2023 capital budgets.*

RESOLUTION NO. 2021-12

A RESOLUTION RATIFYING AND ACCEPTING \$11,000,000  
IN PORT INFRASTRUCTURE DEVELOPMENT PROGRAM  
GRANT FUNDS AND AUTHORIZING AND APPROVING THE  
EXECUTION OF A GRANT AGREEMENT WITH THE U.S.  
DEPARTMENT OF TRANSPORTATION MARITIME  
ADMINISTRATION FOR THE DOCK 24 & 26 MASTER  
MODERNIZATION & REHABILITATION PROJECT

WHEREAS, the Port Infrastructure Development Program (PIDP), as administered by the U.S. Department of Transportation Maritime Administration, was established in 2019 to improve port facilities at or near coastal seaports; and

WHEREAS, the Port Authority filed a 2019 PIDP grant application as part of the U.S. Department of Transportation Maritime Administration (MARAD) Request for Funding Assistance to support portions of the Dock 24 & 26 Master Modernization & Rehabilitation Project; and

WHEREAS, the Port Authority was notified in February of 2020 it was successful in securing \$11,000,000 in PIDP grant funds (the “Grant”) which it desires to accept which require a minimum of 20% local match contribution; and

WHEREAS, the Port Authority desires to proceed with the Project and ratify and accept the Grant in accordance with the terms and conditions of MARAD’s Grant Agreement Under The Fiscal Year 2019 Port Infrastructure Development Program Grants directly associated with MARAD FY 2019 PIDP Grant No. 693JF72040028 (the “Grant Agreement”); and

NOW, THEREFORE, be it resolved by the Board of Directors of the Cleveland-Cuyahoga County Port Authority, Cleveland, Ohio:

Section 1. That the Board of Directors does hereby approve and ratify acceptance of the PIDP Grant in the amount of \$11,000,000 and authorize and approve entering into the Grant Agreement in the form on file with the Port Authority, with such other terms or conditions not materially adverse to the Port Authority and consistent with this Resolution as the officer or officers of the Port Authority executing the same shall in his, her or their judgment deem necessary to carry out the transactions described herein.

Section 2. That the President, Chair, Vice-Chair, Secretary or Assistant Secretary are and each of them is authorized and empowered for and on behalf of the Port Authority and in its name and on behalf of the Board to accept the Grant through the execution of the Grant Agreement with MARAD, and other documents to be delivered to the Port Authority, each subject to and in accordance with the terms and conditions of the Grant and upon such other terms not materially adverse to the Port Authority and consistent with this Resolution which shall be approved by the officer or officers executing such Grant Agreement and related documents. The approval of such changes and that such changes are not materially adverse to the Port Authority shall be

conclusively evidenced by execution of the Grant Agreement and related documents by those officials.

Section 3. That all formal actions of the Board of Directors of the Cleveland-Cuyahoga County Port Authority concerning and relating to the adoption of this Resolution were adopted in an open meeting of the Board of Directors and that all deliberations of this Board of Directors and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. That this Resolution shall take effect immediately upon its adoption.

ADOPTED: July 15<sup>th</sup>, 2021

Yeas: \_\_\_\_\_

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CHAIR

Nays: \_\_\_\_\_

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SECRETARY

Abstentions: \_\_\_\_\_

RESOLUTION NO. 2021-13

A RESOLUTION RATIFYING AND ACCEPTING \$7,495,213.00 IN OHIO MARITIME ASSISTANCE PROGRAM (MAP) GRANT FUNDS AND AUTHORIZING AND APPROVING THE EXECUTION OF A LOCAL-LET PROJECT ADMINISTRATION AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR THE DOCK 24 & 26 MASTER MODERNIZATION & REHABILITATION PROJECT.

WHEREAS, the Maritime Assistance Program of Ohio (“State”) program, administered by the Ohio Department of Transportation, dedicated \$23M in State funds in SFY 2020 and 2021 for qualifying projects to eligible port authorities on Lake Erie, the Ohio River, and tributaries of Lake Erie; and

WHEREAS, the Port Authority filed a MAP grant application as part of the Department of Transportation’s Request for Applications in March 2020 to fund a portion of the Dock 24 & 26 Master Modernization & Rehabilitation Project; and

WHEREAS, the Port Authority has been awarded \$7,495,213.00 in MAP grant funds which it desires to accept, requiring a minimum of 50% match contribution for which the Port Authority plans to use previously accepted MARAD Port Infrastructure Development Grant funds in the amount of \$11,000,000.00; and

WHEREAS, the State administers MAP funds through the Ohio Department of Transportation’s (ODOT) Local Public Agency office; and

WHEREAS; Section 5501.03 (C) of the Ohio Revised Code states the Director of the Ohio Department of Transportation may coordinate the activities of the Department with other appropriate public authorities and enter into contracts with such authorities as necessary to carry out its duties, powers, and functions; and

WHEREAS; it is the mutual desire of both ODOT and the Port Authority, to have the Port Authority serve as the responsible lead agency for the administration, coordination, and responsibilities of the Project as part of ODOT’s Local-Let Project Administration (LPA) Program; and

WHEREAS, the Port Authority desires to proceed with the Project and ratify and accept the Grant in accordance with the terms and conditions of ODOT’s standard LPA Agreement; and

NOW, THEREFORE, be it resolved by the Board of Directors of the Cleveland-Cuyahoga County Port Authority, Cleveland, Ohio:

Section 1. That the Board of Directors does hereby approve and ratify acceptance of the MAP grant in the amount of \$7,495,213.00 (the “Grant”) and authorize and approve entering into an

ODOT LPA Agreement (the “Grant Agreement”) in the form previously utilized for such projects by the Port Authority, with such other terms or conditions not materially adverse to the Port Authority and consistent with this Resolution as the officer or officers of the Port Authority executing the same shall in his, her or their judgment deem necessary to carry out the transactions described herein.

Section 2. That the President, Chair, Vice-Chair, Secretary or Assistant Secretary are and each of them is authorized and empowered for and on behalf of the Port Authority and in its name and on behalf of the Board to accept the Grant through the execution of the Grant Agreement with ODOT, and other documents to be delivered to the Port Authority, each subject to and in accordance with the terms and conditions of the Grant and upon such other terms not materially adverse to the Port Authority and consistent with this Resolution which shall be approved by the officer or officers executing such Grant Agreement and related documents. The approval of such changes and that such changes are not materially adverse to the Port Authority shall be conclusively evidenced by execution of the Grant Agreement and related documents by those officials.

Section 3. That all formal actions of the Board of Directors of the Cleveland-Cuyahoga County Port Authority concerning and relating to the adoption of this Resolution were adopted in an open meeting of the Board of Directors and that all deliberations of this Board of Directors and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. That this Resolution shall take effect immediately upon its adoption.

ADOPTED: July 15, 2021

Yeas: \_\_\_\_\_

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CHAIR

Nays: \_\_\_\_\_

\_\_\_\_\_  
SECRETARY

Abstentions: \_\_\_\_\_

RESOLUTION NO. 2021-14

A RESOLUTION AUTHORIZING AND APPROVING THE PORT AUTHORITY TO ENTER INTO A CONTRACT WITH THE GREAT LAKES CONSTRUCTION COMPANY FOR AN AMOUNT NOT TO EXCEED \$20,923,352.75, INCLUDING \$996,350.00 OF PORT AUTHORITY CONTROLLED CONTINGENCY, FOR THE PURPOSES OF MODERNIZING & REHABILITATING DOCKS 24 & 26W, AND AUTHORIZING THE EXPENDITURE OF FUNDS FROM MONIES THAT HAVE BEEN APPROPRIATED IN THE FY 2021 CAPITAL BUDGET AND FUNDS TO BE INCLUDED IN THE 2022 & 2023 CAPITAL BUDGETS

WHEREAS, the Cleveland-Cuyahoga County Port Authority (the "Port Authority") has determined to proceed with the Dock 24 & 26 Master Modernization & Rehabilitation Project (the "Project"); and

WHEREAS, The Board of Directors ("Board") of the Port Authority by Resolution 2021-12 previously accepted \$11,000,000 in grant funding for the Project from the U.S. Department of Transportation Maritime Administration (the "Federal Grant") and authorized the Port Authority to enter into a Federal Grant Agreement with the U.S. Department of Transportation to carry out the coordination and responsibilities of the Grant; and

WHEREAS, The Board of the Port Authority by Resolution 2021-13 previously accepted \$7,495,213.00 in grant funding for the Project from the Ohio Department of Transportation (the "State Grant") and authorized the Port Authority to enter into a Local Project Agreement with the Ohio Department of Transportation to carry out the coordination and responsibilities of the Grant as part of the State of Ohio Maritime Assistance Program; and

WHEREAS, the Board of Directors of the Port Authority by Resolution 2019-03 authorized entering into a design engineering services contract and authorized the amendment of this contract by Resolution 2020-10 to prepare bid documents in support of this Project; and

WHEREAS, the Port Authority staff completed a competitive bidding process pursuant to Ohio Revised Code §4582.12 to solicit, receive and review bids to perform the construction services for the Project, and responsive and responsible competitive bids were received; and

WHEREAS, the Port Authority staff recommends approval of the bid presented by the Great Lakes Construction Company (the "Company") in the amount of \$19,927,002.75 which was determined to be the lowest responsive and responsible bid with a 5% Owner controlled contingency fund in the amount of \$996,350.00 to cover additional costs related to unforeseen conditions, for a total contract amount not to exceed \$20,923,352.75 including contingencies; and

WHEREAS, the Port Authority included \$12,581,500.00 in the FY 2021 Capital Budget for the construction of the Project which represents the total anticipated funds required to construct this Project in 2021; and

NOW, THEREFORE, BE IT RESOLVED by the Cleveland-Cuyahoga County Port Authority Board of Directors, Cleveland, Ohio:

Section 1. It is found and determined that: (1) the actions of the President and staff of the Port Authority in soliciting, receiving and reviewing bids for construction services for the Project in the manner provided in O.R.C. §4582.01 through 4582.20 and in accordance with the plans and specifications on file with the Port Authority are hereby authorized, approved and ratified; (2) the bid of the Company in the amount of \$19,927,002.75 is the lowest responsive and responsible bid submitted for the Project and is in proper form in full compliance with the specifications and with the notice inviting bids and that such bid is hereby accepted; (3) a \$996,350.00 Port Authority-controlled contingency (5%) will be added to cover additional costs related to unforeseen conditions; and (3) the total contract value shall not exceed \$20,923,352.75.

Section 2. That the President, Chair, Vice Chair, Secretary or Assistant Secretary are and each of them is authorized and empowered for and on behalf of the Port Authority and in its name and on behalf of the Board to enter into a written construction contract with the Company for the Project (the "Agreement") substantially in the form contained in the bid documents currently on file with the Board, and upon such other terms and conditions in the Agreement which shall not be materially adverse to the Port Authority which shall be approved by the officer or officers executing such Agreement and any related documents. The approval of such changes and that such changes are not materially adverse to the Port Authority shall be conclusively evidenced by execution of the Agreement and related documents by those officials.

Section 3. That funds for the Project are available from funds previously appropriated and future funds to be appropriated by the Board for Capital Expenditures and are hereby authorized to be expended pursuant to the Agreement up to the amount of \$19,927,002.75 plus a Port Authority-controlled contingency of up to an additional \$996,350.00.

Section 4. That all formal actions of the Board concerning and relating to the adoption of this Resolution were adopted in an open meeting of the Board and that all deliberations of this Board and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 5. That this Resolution shall take effect immediately upon its adoption.

ADOPTED: July 15<sup>th</sup>, 2021

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CHAIR

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SECRETARY

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTENTIONS: \_\_\_\_\_



RESOLUTION NO. 2021-15

A RESOLUTION AUTHORIZING AND APPROVING THE PORT AUTHORITY TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH KS ASSOCIATES, INC. FOR AN AMOUNT NOT TO EXCEED \$423,466.00, FOR THE PURPOSES OF PROVIDING CONSTRUCTION ADMINISTRATION AND INSPECTION SERVICES ON THE DOCK 24 & 26 MASTER MODERNIZATION & REHABILITATION PROJECT AND AUTHORIZING THE EXPENDITURE OF FUNDS FROM MONIES THAT HAVE BEEN APPROPRIATED IN THE FY 2021 CAPITAL BUDGET AND FUNDS TO BE INCLUDED IN THE 2022 & 2023 CAPITAL BUDGETS.

WHEREAS, the Cleveland-Cuyahoga County Port Authority (the “Port Authority”) has determined to proceed with the Dock 24 & 26 Master Modernization & Rehabilitation Project (the “Project”); and

WHEREAS, The Board of Directors (“Board”) of the Port Authority by Resolution 2021-12 previously accepted \$11,000,000 in grant funding for the Project from the U.S. Department of Transportation Maritime Administration (the “Federal Grant”) and authorized the Port Authority to enter into a Grant Agreement to carry out the coordination and responsibilities of the Federal Grant which require certain construction administrative and oversight obligations; and

WHEREAS, The Board by Resolution 2021-13 previously accepted \$7,495,213.00 in grant funding for the Project from the Ohio Department of Transportation (the “State Grant”) and authorized the Port Authority to enter into a Local Project Agreement with the Ohio Department of Transportation to carry out the coordination and responsibilities of the State Grant which require certain construction administrative and oversight obligations; and

WHEREAS, The Board by Resolution 2021-14 authorized the Port Authority to execute the Construction contract for the Project in an amount not to exceed \$20,923,352.75 with the Great Lakes Construction Company, which includes a Port Authority controlled contingency of \$996,350; and

WHEREAS, the Port Authority has determined it has insufficient internal resources available to fulfill certain construction administration and specialty inspection services on this Project, thus requiring the Port Authority to seek qualified outside consultant support; and

WHEREAS, the Port Authority included \$352,084 in the FY 2021 Capital Budget for the construction administration and inspection services to support this Project in 2021; and

WHEREAS, the Port Authority requested Letters of Interest (“LOI”) from qualified firms for Construction Administration & Inspection Services in accordance with Chapter 153 of the Ohio Revised Code and consistent with the Ohio Department of Transportation Consultant Selection Rating for Programmatic Selections; and

WHEREAS, three (3) LOI were received in response to the announcement, each LOI was evaluated and scored by staff in accordance to the evaluation criteria established in the LOI request, and it was determined that the most qualified firm/team to provide Construction Administration & Inspection Services was a team lead by KS Associates, Inc.; and

WHEREAS, the Port Authority desires to accept the recommendation of staff and award a contract for Construction Administration & Inspection Services to KS Associates, Inc. (“KS”); and

WHEREAS, the Port Authority and KS negotiated a contract including the Scope of Work and providing the enumerated service expenses which shall not exceed \$423,466.00 as set forth in such Agreement on file with the Port Authority which is determined to be fair and reasonable; and

NOW, THEREFORE, BE IT RESOLVED by the Cleveland-Cuyahoga County Port Authority Board of Directors, Cleveland, Ohio:

Section 1. That the actions of the Port Authority, its President and Staff in soliciting and receiving LOI for Construction Administrative and Inspection Services for the Project and in selecting the most qualified firm and negotiating a Professional Services contract, are hereby authorized, approved and ratified, and the award of such services to KS Associates, Inc., being the most qualified firm in response to the request for Letters of Interest, is hereby approved.

Section 2. That the President, Chair, Vice Chair, Secretary or Assistant Secretary are and each of them is authorized and empowered for and on behalf of the Port Authority and in its name and on behalf of the Board to enter into a written contract for Professional Services with the Company for the Project (the “Agreement”) substantially in the form contained in the documents currently on file with the Board, and upon such other terms and conditions in the Agreement which shall not be materially adverse to the Port Authority which shall be approved by the officer or officers executing such Agreement and any related documents. The approval of such changes and that such changes are not materially adverse to the Port Authority shall be conclusively evidenced by execution of the Agreement and related documents by those officials.

Section 3. That funds for the Agreement are available from funds previously appropriated and future funds to be appropriated by the Board for Capital Expenditures and are hereby authorized to be expended pursuant to the Agreement up to the amount of \$423,466.00.

Section 4. That all formal actions of the Board concerning and relating to the adoption of this Resolution were adopted in an open meeting of the Board and that all deliberations of this Board and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 5. That this Resolution shall take effect immediately upon its adoption.

ADOPTED: July 15<sup>th</sup>, 2021

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CHAIR

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SECRETARY

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTENTIONS: \_\_\_\_\_