

## **GUARANTY AGREEMENT**

This Guaranty Agreement (the “Agreement”) dated as of February \_\_, 2023, is executed and delivered by the City of Pataskala, Ohio (the “Guarantor”) to the Director of the Ohio Department of Transportation of the State of Ohio (the “ODOT”) under the circumstances summarized herein (the capitalized terms in the recitals being used therein as defined in Article I of this Agreement):

A. ODOT has proposed a loan of \$7,000,000 to the Licking County Transportation Improvement District (“District”), the proceeds of such loan are to be used by the District to widen Refugee Road and construct roundabouts at the termini of Etna Parkway and Mink Street, hereinafter referred to as the Project.

B. ODOT has required that as security for its loan to the District that the Guarantor provide a guaranty from its Income Tax Revenues (as defined below) of the Guarantor for the payment of ODOT loan.

C. The Guarantor is willing to enter into this Agreement in order to induce ODOT to make its loan to the District so as to permit construction of the Project.

D. The Agreement between ODOT and the District calls for the State Loan to be amortized over a twenty (20) year term from the Loan Closing Date.

E. The Guarantor is willing to enter into this Agreement to guarantee payment of the ODOT Loan if ODOT declares any of the indebtedness of the Guarantor to be immediately due and payable under the terms of ODOT’s Loan Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual representations and agreements herein contained the Guarantor and ODOT hereby covenant agree as follows:

### **ARTICLE I:**

#### **DEFINITIONS**

1.1 Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or other instruments, the words and terms set forth in Section 1.2 hereof shall have the meanings therein set forth unless the context or use expressly indicates a different meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms therein defined.

1.2 Definitions. As used herein:

“Agreement” means this Agreement as from time to time amended or supplemented.

“Event of Default” shall mean the failure of the District to pay any amount due under the terms of the State Loan Note. “Event of Default” under this Agreement shall also mean any failure of the Guarantor to comply with the provisions of O.R.C. Sections 5705.41 and 5705.44 as relates to the Funds (as defined below) or if the Guarantor fails to observe or perform any agreement, term or condition stated in this Guaranty, and such failure shall continue for a period of thirty (30) days after notice of such failure is given to the Guarantor by ODOT, or for such longer period as ODOT may agree to in writing.

“Funds” means those Income Tax Fund Revenues of the Guarantor, defined as the City tax of 1 percent (1.0%) levied on salaries, wages, commissions and other compensation, and net profits earned within the City as well as incomes of residents earned outside of the City required to meet the obligation that have been lawfully appropriated for such purpose and are in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances pursuant to O.R.C. Section 5705.41.

“Notice Address” means:

(A) As to ODOT: Ohio Department of Transportation  
1980 W. Broad Street, Mailstop 2130  
Columbus, Ohio 43223  
ATTN: ODOT-SIB Administrator

(B) As to the Guarantor: City of Pataskala  
Timothy O. Hickin  
City Administrator  
621 W. Broad Street  
Pataskala, Ohio 43062

Copies to: Brian M. Zets  
Law Director  
ISAAC WILES & BURKHOLDER, LPA  
Two Miranova Place, Suite 700  
Columbus, Ohio 43215

(C) As to the District: Licking County Transportation Improvement  
District  
20 South 2<sup>nd</sup> Street  
Newark, Ohio 43055

“Pataskala’s Guaranteed Amount” shall mean:

(A) Fifty percent (50%) of the unfunded Project completion cost, as determined by the LCTID after consultation with Guarantor and

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- (B) Fifty percent (50%) of the final amount of the SIB loan drawn at project completion, including the Principal, Interest and administrative fee amount designated in Schedule A according to the amortization schedule set forth in Schedule A.

A credit, in a like amount, shall be applied to the Pataskala Guaranteed Amount if the City of Pataskala contributes cash equity to the project in lieu of drawing eligible SIB Loan proceeds. In addition, the Pataskala Guaranteed Amount shall be reduced, in a like amount, if the SIB Loan is prepaid in part or in full.

Schedule A shall be recalculated if the final amount of the SIB loan drawn at project completion is less than \$7,000,000.00.

“State” means the State of Ohio.

“ODOT Loan” means the loan in the principal amount of Seven Million Dollars and No Cents (\$7,000,000) made by ODOT to the District pursuant to the State Loan Documents together with the required interest on that principal amount.

“State Loan Note” means the State Loan Note in the principal amount of Seven Million Dollars and No Cents (\$7,000,000) evidencing the obligation of the District to repay to ODOT the State Loan.

“ODOT Loan Documents” means this Agreement, the Loan Agreement between ODOT and the District, and all other agreements, indentures, certificates, instruments and other documents required by ODOT to evidence or secure or delivered in connection with the consummation of the State Loan, as such documents may be amended or supplemented from time to time.

## ARTICLE II

### **REPRESENTATIONS AND WARRANTIES**

2.1 The Guarantor represents and warrants that it is duly organized and validly existing under the Constitution and laws of the State and has full power and authority to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated herein and have by proper action of its Council duly authorized, executed and delivered this Agreement and all steps necessary have been taken to constitute this Agreement, when duly executed and delivered by all parties hereto, a legal, valid and binding obligation of the Guarantor.

2.2 The Guarantor further represents and warrants that this Agreement is made in furtherance of its public purposes and is necessary to promote and further activities which it is authorized to undertake and that the result of this Agreement will be to materially contribute to the Error! Unknown document property name.

economic revitalization of areas of the State and improve the economic welfare of the people of the State.

2.3 ODOT represents and warrants that it has full power and authority to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated herein, and has taken the action necessary to authorize, execute and deliver this Agreement and all steps necessary have been taken to constitute this Agreement when duly executed and delivered a legal, valid and binding obligation of ODOT.

### **ARTICLE III**

#### **GUARANTY**

3.1 The Guarantor, subject to the terms and conditions set forth herein, hereby absolutely and unconditionally guarantees from its Funds to ODOT for its benefit and that of its successors and assigns the full and prompt payment of the Pataskala Guaranteed Amount. All payments by the Guarantor hereunder shall be made in lawful money of the United States of America and shall be made solely and exclusively from its Funds. In the event that this Agreement shall come into effect after the occurrence of an Event of Default, the moneys shall be immediately due and payable to ODOT by the Guarantor.

- (i) Notwithstanding anything else contained herein or in any of the other ODOT Loan Agreements, in connection with its obligation to guaranty payment due from the District, the Guarantor:
  - a. Shall not be required to encumber or otherwise set aside any Funds until such time as the first payment from the District to ODOT is due under the State Loan Note (“the First Due Date”) and agrees to prioritize its obligation hereunder prior to budgeting any other debt repayment from the Funds; and
  - b. Starting on the First Due Date and during the remaining term of the State Loan Note, shall only be required to encumber Funds sufficient to pay the amount of the principal and interest due under the State Loan Note in the fiscal year when such principal and interest is due which, in all events, shall be no more than the amount of principal and interest due under the State Loan Note in any given twelve (12) month period.

3.2 The obligations of Guarantor under Section 3.1 of this Agreement shall be absolute, unconditional, present and continuing guaranties of payment and performance from the Funds, and shall remain in full force and effect until provision has been made in accordance with the ODOT Loan Agreement and the ODOT Loan Note for the payment of the entire sum due on the State Loan and the State Loan Note. This obligation shall not be affected, modified or impaired upon the happening from time to time of any event, whether or not with notice to or consent of ODOT or the Guarantor.

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3.3 This Guaranty is an unconditional and absolute guaranty, irrespective of the validity, regularity or enforceability of any of the Loan Documents or any circumstances which might otherwise constitute a legal or equitable discharge or defense of the Guarantor. No counterclaim, set off, reduction of an obligation or defense of any kind which the Guarantor may have or assert against ODOT shall affect, modify or impair the Guarantor's obligations hereunder.

3.4 The Guarantor acknowledges that ODOT is making the loan to the District of the Loan Amount in reliance upon this Guaranty and the representations, warranties, covenants and agreements of the Guarantor made herein.

3.5 No amendment, change, modification, alteration or termination of this Agreement, the ODOT Loan Agreement, the ODOT Loan Note, or any other ODOT Loan Document shall in any way increase the burden of Guarantor's obligations under this Article III unless the written consent of the Guarantor thereto has first been obtained.

3.6 No remedy conferred upon or given to ODOT under Article IV is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy under this Article III or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance under this Article III shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order for ODOT to exercise any remedy, reserved or given to it in this Article III, it shall not be necessary to give any notice other than such notice as may be herein expressly required.

3.7 If any provision contained in this Article III should be breached by either party hereto and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

3.8 No waiver, amendment, release or modification of this Article III shall be established by conduct, custom or course of dealing but solely by instrument in writing duly executed by the Guarantor and ODOT.

3.9 The Guarantor, forthwith upon learning of any of the following, shall deliver written notice thereof to ODOT describing the same:

- (i) the occurrence of an Event of Default or an event or circumstance which would constitute an Event of Default, but for the requirement that notice be given or time elapse or both; or
- (ii) any action, suit or proceeding by or against the Guarantor at law or in equity, or before any governmental instrumentality or

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agency, instituted or threatened which, if adversely determined, would materially and adversely affect the Guarantor's ability to perform under this Agreement.

3.10 The Guarantor shall not enter into any agreement containing any provision which would be violated or breached by the performance of the Guarantor's obligations hereunder or under any instrument or document delivered or to be delivered by the Guarantor hereunder or in connection herewith. In addition, the Guarantor shall agree to subordinate any future pledge of the Funds if in any one calendar year the expected amount of the Funds generated when divided by the scheduled annual debt service of all outstanding obligations secured by the Funds are equal or less than 1.5.

## **ARTICLE IV**

### **REMEDIES**

4.1 Upon the occurrence of an Event of Default, ODOT may proceed and, in ODOT's sole discretion, shall have the right to proceed first and directly against the Guarantor under this Agreement without proceeding against or exhausting any other remedies which ODOT may have under the ODOT Loan Documents and without resorting to any other security held by ODOT.

4.2 ODOT shall, at ODOT's discretion and without the necessity of obtaining the consent of or giving notice to the Guarantor, have the right to (i) deal in any manner with the District, including the right to grant any indulgence, forbearance, change, amendment, release, extension or other modification of the State Loan Documents and to waive compliance with any of the terms or provisions of the ODOT Loan Documents; (ii) exchange, release, fail to resort to or otherwise deal in any manner with any security which may at any time be given to secure the ODOT Loan Note, (iii) effect any release, compromise or settlement with respect to the ODOT Loan Documents, (iv) accelerate the maturity of the ODOT Loan Note, and (v) accept partial payment or payments of or extend the time for payment of any amounts due on or under this Guaranty. Irrespective of ODOT taking or refraining from taking any of the above actions or any of the actions referred to in the ODOT Loan Documents or this Guaranty, the obligations of the Guarantor under this Guaranty shall remain in full force and effect and shall not be affected, modified or impaired in any manner.

4.3 The Guarantor expressly waives notice, in writing or otherwise, from ODOT of ODOT's acceptance of, and reliance on, this Guaranty.

## **ARTICLE V**

### **MISCELLANEOUS**

5.1 This Agreement shall be governed as to validity, interpretation, enforcement and effect by the laws of the State.

5.2 Each section, subsection, sentence and provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. But, if any section, subsection, sentence or provision of this Agreement shall be prohibited by or invalid under applicable law, such section, subsection, sentence or provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating or prohibiting the remainder of such section subsection, sentence or provision of this Agreement.

5.3 Any notice given hereunder shall be in writing and shall be given by forwarding by certified or registered mail, postage prepaid or by overnight courier service, delivered charges prepaid. Any party hereto may change its Notice Address by giving written notice of the change to the other party. A copy of any notice given hereunder shall be sent by the party giving the notice to the District.

5.4 This Guaranty shall not be modified except by a written agreement duly executed by ODOT and the Guarantor. The rights and remedies of ODOT hereunder shall not be altered, limited or waived by any representation, promise or course of conduct hereunder pursued by ODOT, unless evidenced by an agreement in writing duly executed by ODOT.

5.5 This Agreement may not be assigned by any party without the advance written consent of the other party hereto.

5.6 All terms, provisions and agreements contained in this Guaranty shall be construed liberally in favor of ODOT, shall inure to the benefit of and be enforceable by ODOT, ODOT's successors and assigns as holder of the Note, and shall be binding upon the Guarantor and the Guarantor's successors and assigns.

5.7 This Agreement is solely for the benefit of ODOT and the Guarantor and is not intended to grant any rights, benefits or defenses to or for the benefit of any other person whatsoever.

5.8 This Agreement is the entire agreement between the parties hereto relating to the matters set forth herein and supersedes all prior understandings and agreements, whether written or oral, between the parties hereto and the Guarantor relating to such matters.

5.9 This Agreement and any amendment hereto may be executed in several counterparts and by each party on a separate counterpart, each of which, when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, this Guaranty has been executed and delivered as of the date first above written.

CITY OF PATASKALA

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Timothy O. Hickin, City Administrator

Accepted as of the \_\_\_\_ day February, 2023

OHIO DEPARTMENT OF TRANSPORTATION

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Jack Marchbanks, PhD., Director