

Ordinance No. 319-2024 AS AMENDED

By Council Member Griffin
(by departmental request)

AN EMERGENCY ORDINANCE

AUTHORIZING THE ESTABLISHMENT OF AND ISSUANCE BY THE CITY OF CLEVELAND OF CITY OF CLEVELAND AIRPORT SYSTEM SUBORDINATED INDEBTEDNESS IN THE FORM OF REVOLVING LINES OF CREDIT AND/OR A COMMERCIAL PAPER PROGRAM IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED ONE HUNDRED AND SEVENTY-FIVE MILLION DOLLARS (\$175,000,000) AT ANY ONE TIME TO PAY COSTS OF IMPROVING THE AIRPORT SYSTEM; AUTHORIZING ONE OR MORE REVOLVING CREDIT AGREEMENTS, REIMBURSEMENT AGREEMENTS, OFFICIAL STATEMENTS, DEALER AGREEMENTS, SUPPLEMENTAL INDENTURES, NOTES EVIDENCING SUBORDINATED INDEBTEDNESS AND OTHER AGREEMENTS RELATED TO SUBORDINATED INDEBTEDNESS; AND AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, under authority of the Constitution of the State of Ohio and the Charter of the City of Cleveland, Ohio (the “City”), this Council has by ordinance authorized the issuance of Revenue Bonds, from time to time, for the Airport System under the terms and security of the Amended and Restated Trust Indenture (Seventeenth Supplemental Trust Indenture), effective as of January 31, 2012 (the “Trust Indenture”), between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”); and

WHEREAS, this Council has determined to authorize the issuance by the City of Subordinated Indebtedness in the form of establishing a revolving line or lines of credit (as further defined herein, the “2024 Revolving Line of Credit”) and/or a commercial paper program (as further defined herein, the “2024 Commercial Paper Program”) under the terms and security of the Trust Indenture, as supplemented and amended, for the purpose of paying costs of improving the facilities of the Airport System; and

WHEREAS, this Ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department and providing for the immediate preservation of the public peace, property, health or safety in that authorizing the 2024 Revolving Line of Credit and 2024 Commercial Paper Program is necessary to fund contracts for improvements to the Airport System needed for the provision of air services to the public; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. Definitions.

In addition to the words and terms defined in the Trust Indenture, as amended and supplemented, and as to be further amended and supplemented as provided in this Ordinance, the following words and terms shall have the following meanings, unless the context or use indicates a contrary meaning or intention.

“2024 Commercial Paper Program” means the program for the issuance and sale of commercial paper notes authorized by Sections 6 and 7 hereof.

“2024 Revolving Line of Credit” means one or more revolving lines of credit authorized by Sections 4 and 5 hereof.

“2024 Subordinated Indebtedness” means the Revolving Loan Notes and the Commercial Paper Notes, either or both of which the City may issue as authorized by this Ordinance.

“Available Commitment” means, on any date, an initial amount equal to \$175,000,000 and thereafter such initial amount adjusted from time to time as follows: (a) downward in an amount equal to any draw or advance pursuant to the Revolving Credit Agreement or Reimbursement Agreement, as applicable; (b) upward in an amount equal to the principal amount of any 2024 Subordinated Indebtedness that is repaid or prepaid in the manner provided by the Revolving Credit Agreement or Reimbursement Agreement, as applicable; and (c) downward upon the expiration, termination or reduction of available loans or credit support pursuant to any Revolving Credit Agreement or Reimbursement Agreement; provided, that, after giving effect to any of the foregoing adjustments the Available Commitment shall never exceed \$175,000,000 at any one time.

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“Bank” means the bank that is providing interim financing through loans under the provisions of a Revolving Credit Agreement.

“Book–entry form” or “book–entry system” means with respect to Commercial Paper Notes, a form or system, as applicable, under which (a) the ownership of beneficial interests in Commercial Paper and debt charges thereon may be transferred only through a book–entry, and (b) physical Commercial Paper Notes in fully registered form, in the form of the Master Commercial Paper Note Certificate registered only in the name of a Depository or its nominee as holder in fully registered form. The book–entry system is maintained by and is the responsibility of the Depository and not the City or the Trustee. 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 Commercial Paper Notes.

“Certificate of Award” means one or more certificates delivered by the Director of Finance pursuant to Section 2 providing for the final terms of the establishment of the 2024 Revolving Line of Credit and/or the 2024 Commercial Paper Program.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code and all applicable Treasury regulations.

“Commercial Paper Notes” means the commercial paper notes issued by the City from time to time under the 2024 Commercial Paper Program in an aggregate principal amount not to exceed the Available Commitment.

“Dealer” means the dealer of commercial paper notes named in the Dealer Agreement.

“Dealer Agreement” means a commercial paper dealer agreement to be entered into by and between the City and a dealer of commercial paper notes for the purchase of the Commercial Paper Notes by the dealer from the City or the arrangement by the dealer for the purchase of Commercial Paper Notes by other investors.

“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 beneficial ownership of Commercial Paper and debt service charges thereon, and to effect transfers of Commercial Paper, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Indenture” means the Trust Indenture as amended and supplemented by the Eighteenth Supplemental Trust Indenture dated as of February 1, 2012, the Nineteenth Supplemental Trust Indenture dated as of April 1, 2013, the Twentieth Supplemental Trust Indenture dated as of February 1, 2014, the Twenty-First Supplemental Trust Indenture dated as of February 23, 2016, the Twenty-Second Supplemental Trust Indenture dated as of October 4, 2016, the Twenty-Third Supplemental Trust Indenture dated as of October 4, 2018 and the Twenty-Fourth Supplemental Trust Indenture dated as of October 1, 2019 as the same may be further amended, supplemented or restated from time to time.

“Letter of Credit” means the direct-pay or revolving letter of credit to be issued by the Letter of Credit Bank to support the issuance of the Commercial Paper Notes.

“Letter of Credit Bank” means the bank that provides credit enhancement and liquidity support for payment of the Commercial Paper Notes through a Letter of Credit.

“Master Commercial Paper Note Certificate” means the master note certificate held by a Depository in the form attached to applicable Supplemental Indenture or Reimbursement

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Agreement for the 2024 Commercial Paper Program as further authorized and described in Section 6.

“Municipal Advisor” means any financial advisory firm or firms retained by the Director of Finance of the City, from time to time, in connection with the 2024 Subordinated Indebtedness. This term is used as “Financial Advisor” in prior legislation and documentation related to the Outstanding Revenue Bonds.

“Official Statement” means an official statement or offering memorandum relating to the issuance of the Commercial Paper Notes.

“Outstanding Revenue Bonds” as used in this Ordinance, means Revenue Bonds issued and outstanding, from time to time, under the Indenture.

“Project” means (i) improvements to the Airport System comprising the Terminal Modernization Development Program and the acquisition of any interests in real property necessary therefor, related design, planning, environmental studies, environmental remediation and regulatory compliance costs, site preparation, construction management services, and appurtenant improvements; (ii) such additional or different improvements to the Airport System as the Director of Port Control deems necessary, provided that (A) all conditions for the inclusion of the cost of any such improvements in the calculation of Landing Fees or Rentals under Section 8.07 of the Use Agreements shall have been met, and (B) in the event that proceeds of a series of Tax-Exempt Subordinated Indebtedness are to be used to pay costs of such improvements, the City shall have obtained the opinion of nationally recognized bond counsel that the expenditure of proceeds of such Tax-Exempt Subordinated Indebtedness to pay costs of such improvements will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on such Tax-Exempt Subordinated Indebtedness.

“Reimbursement Agreement” means the agreement between the City and the Letter of Credit Bank, including any promissory notes, to evidence the provision of a Letter of Credit to support the payment of the Commercial Paper Notes.

“Revenue Bonds” means Outstanding Revenue Bonds and any Additional Revenue Bonds issued under the Indenture.

“Revolving Credit Agreement” means the agreement entered into by the City and the Bank to evidence interim financing through the provision of loans in the form of Revolving Loan Notes.

“Revolving Loan Notes” means the notes issued by the City as Subordinated Indebtedness under a Revolving Credit Agreement and designated as (Tax-Exempt AMT), (Tax-Exempt Non-AMT) or (Taxable), as appropriate, evidencing a revolving line of credit as authorized and further described in Section 4 hereof.

“Supplemental Indenture” means each Supplemental Trust Indenture delivered to supplement the Trust Indenture, to further provide for the terms and security of one or more issues of 2024 Subordinated Indebtedness, series of Revenue Bonds or to amend the Trust Indenture, as theretofore supplemented and amended.

“Taxable Subordinated Indebtedness” means any 2024 Subordinated Indebtedness the interest on which is included in gross income for federal income tax purposes including a Revolving Loan Note and/or Commercial Paper Note designated as Taxable.

“Tax-Exempt Subordinated Indebtedness” means the 2024 Subordinated Indebtedness designated “Tax-Exempt Non-AMT” or “Tax-Exempt AMT”, the interest on which

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is not included in gross income for federal income tax purposes, including a Revolving Loan Note and/or Commercial Paper Note so designated.

“Terminal Modernization Development Program” means the Airport System’s program of related improvements, that include among other projects, the (i) renovation and expansion of the terminal building and concourse areas at the Airport, (ii) relocation of the rental car facility, and (iii) construction of roadway access improvements. The Terminal Modernization Development Program may be amended from time to time and includes but is not limited to planning, design and engineering services, program management services, headhouse and new terminal enabling projects, parking improvements, building demolition, deicing facility upgrades, new ground support equipment facility, and new airline fueller facilities.

Section 2. Authorization of the 2024 Subordinate Indebtedness.

This Council authorizes the City to issue the 2024 Subordinated Indebtedness in the form of the Commercial Paper Notes and/or the Revolving Loan Notes for the purpose of paying costs of the Project. The aggregate amount of the 2024 Subordinated Indebtedness authorized by this Ordinance shall not exceed the Available Commitment.

- (a) The aggregate amount of the 2024 Revolving Line of Credit is to be the amount set forth in a Certificate of Award, determined by the Director of Finance, based on the written advice of a Municipal Advisor, to be the amount necessary, together with other funds available for the purpose to (i) finance the cost of the Project, including reimbursements to the City and (ii) pay costs of establishing the 2024 Revolving Line of Credit and of issuing the Revolving Loan Notes. The Director of Finance shall also determine in the Certificate of Award, based on the written advice of a Municipal Advisor, the Bank that will provide the 2024 Revolving Line of Credit, the determination of any interest rate (which shall not exceed 25%) and the number of years until expiration of the 2024 Revolving Line of Credit.
- (b) The aggregate amount of the 2024 Commercial Paper Program is to be the amount set forth in a Certificate of Award, and determined by the Director of Finance, based on the written advice of a Municipal Advisor, to be the amount necessary, together with other funds available for the purpose to (i) finance the cost of the Project, including reimbursements to the City, and the rolling over of the Commercial Paper Notes, and (ii) pay costs of establishing the 2024 Commercial Paper Program and of issuing the Commercial Paper Notes. The Director of Finance shall also determine in the Certificate of Award, based on the written advice of a Municipal Advisor, the Letter of Credit Bank that will provide the Letter of Credit for the 2024 Commercial Paper Program, the determination of any interest rate (which shall not exceed 25%) and the number of years until expiration of the 2024 Commercial Paper Program.

A separate Certificate of Award and a separate Supplemental Indenture may be delivered for the establishment of each of the 2024 Revolving Line of Credit and the 2024 Commercial Paper Program. The 2024 Subordinated Indebtedness shall constitute Subordinated Indebtedness for all purposes of the Indenture.

This Council finds and determines that the issuance of the 2024 Subordinated Indebtedness for the purpose provided in this Ordinance serves a proper, public, municipal purpose by providing, maintaining and improving air travel facilities serving the people of the City of Cleveland, thereby increasing and promoting commerce by providing necessary transportation for individuals and commercial enterprises purchasing and selling services and products in northeastern Ohio, and creating and preserving jobs and employment opportunities in the City and improving the economic welfare of the City.

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Section 3. Terms of 2024 Subordinated Indebtedness.

The 2024 Subordinated Indebtedness shall contain the terms provided in or determined pursuant to, the Indenture, this Ordinance, the applicable Certificate of Award and the applicable Supplemental Indenture. The 2024 Subordinated Indebtedness shall also contain the terms required by the Revolving Credit Agreement, Reimbursement Agreement, the Dealer Agreement and other agreements that the Director of Finance deems necessary to establish the 2024 Revolving Line of Credit and/or the 2024 Commercial Paper Program, to the extent applicable to such 2024 Subordinated Indebtedness.

(a) General. The Director of Finance is authorized to enter into agreements with others in connection with the delivery of the 2024 Subordinated Indebtedness, and from time to time thereafter so long as the 2024 Subordinated Indebtedness is outstanding, as may be determined by the Director of Finance to be necessary or appropriate to provide for (i) the method of determining variable interest rates, (ii) the rights and procedures for draws upon the Revolving Credit Agreement or Reimbursement Agreement, (iii) repayment by the City of any amounts drawn pursuant to a Revolving Credit Agreement or Reimbursement Agreement, and (iv) other arrangements in the best interests of the City. The Director of Finance is further authorized to terminate any such agreements if the Director of Finance determines, based on the written advice of a Municipal Advisor, that the City's best interests will be served by such termination. The Director of Finance is further authorized to enter into agreements, from time to time so long as the 2024 Subordinated Indebtedness is outstanding, supplementing or amending the applicable Supplemental Indenture for such 2024 Subordinated Indebtedness as provided in Section 9. To the extent that any fees and expenses associated with agreements entered into or terminated pursuant to this Section are not paid from proceeds of the 2024 Subordinated Indebtedness, those fees and expenses shall be paid from Fund Nos. 60 SF 001, 60 SF 104, 60 SF 105, 60 SF 106, 60 SF 126, 60 SF 141 and 60 SF 145, as determined by the Director of Finance after consultation with the Director of Port Control.

(b) Form; Exchange and Transfer for Commercial Paper Notes. All Commercial Paper Notes shall be issued in fully registered form. The Commercial Paper Notes initially may be delivered in book-entry only form, registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository, and not transferable or exchangeable (except for transfer to another Depository or its nominee) without further action by the City pursuant to the provisions of the Trust Indenture.

If any Depository determines not to continue to act as a Depository for the Commercial Paper Notes of any series held in a book-entry system, the Director of Finance and the Trustee may attempt to establish a securities depository/book-entry relationship with another qualified Depository. If the Director of Finance and the Trustee do not or are unable to do so, the Director of Finance and the Trustee, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Commercial Paper Notes of any series from the Depository, and authenticate and deliver a registered Master Commercial Paper Note Certificate to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of action or inaction of the City, of those persons requesting such issuance.

The Director of Finance is authorized to enter into any agreements determined by the Director of Finance to be necessary in connection with the book-entry system for the Commercial Paper Notes, after determining that those agreements will not endanger the funds or securities of the City under the Indenture (as evidenced by the Director of Finance's signing of those agreements).

(c) Signing. The Master Commercial Paper Note Certificate and the Revolving Loan Notes, and any promissory notes in connection with a Reimbursement Agreement and/or a

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Letter of Credit, shall be signed by the Mayor and the Director of Finance and approved as to form by the Director of Law. Any or all of the signatures of those officials may be facsimiles. The Master Commercial Paper Note Certificate and the Revolving Loan Notes, and, as necessary, and any promissory notes in connection with a Reimbursement Agreement and/or a Letter of Credit, shall bear the corporate seal of the City or a facsimile thereof.

Section 4. Draws or Advances upon the Revolving Loan Notes.

The Revolving Loan Notes shall be issued in substantially the forms attached to the applicable Supplemental Indenture and/or the Revolving Credit Agreement.

The Revolving Loan Notes are authorized to be issued in an aggregate principal amount not to exceed the Available Commitment, but no principal amount shall be deemed outstanding until such time as a draw is made pursuant to the Revolving Credit Agreement and in accordance with the applicable Supplemental Indenture.

Each draw or advance authorized by the Revolving Credit Agreement shall be evidenced by the Director of Finance pursuant to a certificate as set forth in the Revolving Credit Agreement. The certificate for each draw or advance authorized by the Revolving Credit Agreement shall determine the following:

- (a) the principal amount drawn or advanced;
- (b) identify the proposed draw or advance as Tax-Exempt AMT, Tax-Exempt Non-AMT or Taxable, as appropriate; and
- (c) any other information that may be required by the Revolving Credit Agreement.

It is determined that the terms of the Revolving Loan Notes as so determined within the limitations set forth in this Ordinance and as so specified and set forth in the Certificate of Award will be in the best interest of the City and consistent with all legal requirements.

Section 5. Authorization of the 2024 Revolving Line of Credit and the Revolving Credit Agreement.

The Director of Finance is authorized to establish the 2024 Revolving Line of Credit by executing a Certificate of Award and by contracting from time to time for one or more Revolving Credit Agreements and related Revolving Loan Notes thereunder if the Director of Finance determines, based on the written advice of a Municipal Advisor, that a Revolving Credit Agreement and related Revolving Loan Notes thereunder will be in the best interests of the City to finance the Project. The Director of Finance is further authorized to agree to the amendment, replacement, assignment or termination of any Revolving Credit Agreement and related Revolving Loan Notes thereunder if the Director of Finance determines, based on the written advice of a Municipal Advisor, that the City's best interests will be served by such amendment, replacement, assignment or termination. In the event the Director of Finance determines, based on the written advice of a Municipal Advisor, that it is necessary to supplement or amend the Trust Indenture or a Supplemental Indenture in order to permit the use of, or to amend, replace, assign or terminate, a Revolving Credit Agreement and related Revolving Loan Notes thereunder, the Director of Finance and the Director of Port Control are authorized to sign and deliver a Supplemental Indenture amending the Trust Indenture or an amendment of a Supplemental Indenture, approved as to form and correctness by the Director of Law. The cost of obtaining, amending, replacing, assigning or terminating each Revolving Credit Agreement and related Revolving Loan Notes thereunder, except to the extent paid from proceeds of the Revolving Loan Notes or otherwise, shall be paid from Fund Nos. 60 SF 001, 60 SF 104, 60 SF

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106 and 60 SF 141 and/or passenger facility charges, as determined by the Director of Finance after consultation with the Director of Port Control.

Section 6. Issuance of Commercial Paper Notes

The Master Commercial Paper Note Certificate shall be issued in substantially the form attached to the applicable Supplemental Indenture and/or the Reimbursement Agreement.

The Commercial Paper Notes are authorized to be issued in an aggregate principal amount not to exceed the Available Commitment, but no principal amount shall be deemed outstanding until such time as an issuance request is made by the City to the Trustee and the Dealer pursuant to the applicable Supplemental Indenture.

Upon delivery of an issuance request by the Director of Finance to the Trustee, the Dealer and/or the Letter of Credit Bank as may be provided for in the Supplemental Indenture and/or the Reimbursement Agreement, the Commercial Paper Notes shall be issued at such times, be sold to such purchasers at such prices, bear interest payable at maturity, mature on such Business Days and otherwise have such terms and conditions as shall be determined by the Director of Finance in accordance with the applicable Supplemental Indenture; provided, however, that no Commercial Paper Note shall be issued with a maturity date later than 270 days from its date of issuance, and, unless otherwise determined in the Certificate of Award, each Commercial Paper Note must have a maturity date at least five (5) days prior to the stated expiration date of the Letter of Credit.

It is determined that the terms of the Commercial Paper Notes as so determined within the limitations set forth in this Ordinance and as so specified and set forth in the Certificate of Award will be in the best interest of the City and consistent with all legal requirements.

Section 7. Authorization of the 2024 Commercial Paper Program, Letter of Credit, Dealer Agreement and Reimbursement Agreement.

The Director of Finance is authorized to establish the 2024 Commercial Paper Program by executing a Certificate of Award and by contracting from time to time for one or more Letter of Credit, Dealer Agreement and/or Reimbursement Agreements for the Commercial Paper Notes if the Director of Finance determines, based on the written advice of a Municipal Advisor, that the Letter of Credit, Dealer Agreement and/or Reimbursement Agreements are in the best interests of the City for the financing of the Project. The Director of Finance is further authorized to agree to the amendment, replacement, assignment or termination of any Dealer Agreement or Reimbursement Agreement if the Director of Finance determines, based on the written advice of a Municipal Advisor, that the City's best interests will be served by such amendment, replacement, assignment or termination. In the event the Director of Finance determines, based on the written advice of a Municipal Advisor, that it is necessary to supplement or amend the Trust Indenture or a Supplemental Indenture in order to permit the use of, or to amend, replace, assign or terminate, a Dealer Agreement or Reimbursement Agreement, the Director of Finance and the Director of Port Control are authorized to sign and deliver a Supplemental Indenture amending the Trust Indenture or an amendment of a Supplemental Indenture, approved as to form and correctness by the Director of Law. The cost of obtaining, amending, replacing, assigning or terminating each Dealer Agreement or Reimbursement Agreement, except to the extent paid from proceeds of the Commercial Paper Notes or otherwise, shall be paid from Fund Nos. 60 SF 001, 60 SF 104, 60 SF 105, 60 SF 106, 60 SF 126, 60 SF 141 and 60 SF 145, as determined by the Director of Finance after consultation with the Director of Port Control.

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Section 8. Application of Proceeds of 2024 Subordinated Indebtedness.

The proceeds or draws, as applicable, from the 2024 Subordinated Indebtedness shall be applied as provided in the applicable Supplemental Indenture, including:

- (a) to the Subordinated Indebtedness Costs of Issuance Fund, to be created under the applicable Supplemental Indenture, such amounts as are needed to pay costs of issuing the 2024 Subordinated Indebtedness;
- (b) to a fund established pursuant to the 2024 Commercial Paper Program, any proceeds to be deposited to pay the principal of and any premium and interest on any Commercial Paper Notes to be rolled over with proceeds of new Commercial Paper Notes; and
- (c) to the Construction Fund, the balance of such proceeds [with designations for (Tax-Exempt AMT), (Tax-Exempt Non-AMT) or (Taxable) projects as further provided in the in the applicable Supplemental Indenture].

The proceeds from the sale of the 2024 Subordinated Indebtedness are appropriated and shall be used for the purpose for which the 2024 Subordinated Indebtedness is issued as provided in this Ordinance.

Section 9. Authorization of Supplemental Indentures and Amendments of Indenture.

In order to establish the 2024 Revolving Line of Credit and 2024 Commercial Paper Program and to secure the payment of the principal of and any premium and interest on the 2024 Subordinated Indebtedness, the Mayor, the Director of Finance and the Director of Port Control, or any two of them, are authorized, in the name and on behalf of the City, to sign and deliver to the Trustee, in trust for the original purchasers and subsequent holders of the 2024 Subordinated Indebtedness, one or more Supplemental Indentures, approved as to form and correctness by the Director of Law, not inconsistent with this Ordinance, the Certificates of Award and the Indenture and not substantially adverse to the City as may be approved by the officers signing the same on behalf of the City. The determination by those officers that a Supplemental Indenture is not substantially adverse to the City shall be conclusively evidenced by the signing and delivery of that Supplemental Indenture by those officers. Subject to the requirements of Article XIII of the Trust Indenture, any Supplemental Indenture may contain amendments to the Trust Indenture to permit the City increased flexibility for the use of financial or credit structures and techniques determined by the Director of Finance, based on the written advice of a Municipal Advisor, to be in the best interests of the City.

Section 10. Tax Covenants.

(a) Tax-Exempt Subordinated Indebtedness. With respect to any 2024 Subordinated Indebtedness that is to be issued as Tax-Exempt Subordinated Indebtedness, the City covenants that:

- (i) it will use, and will restrict the use and investment of, the proceeds of the Tax-Exempt Subordinated Indebtedness in such manner and to such extent as may be necessary so that (a) the interest on the Tax-Exempt Subordinated Indebtedness will be excluded from gross income for federal income tax purposes, and (b) in the case of any Tax-Exempt Subordinated Indebtedness qualifying as bonds, the interest on which is not treated as an item of tax preference under Section 57 of the Code (“Non-AMT Subordinated Indebtedness”), such Tax-Exempt Subordinated Indebtedness will be treated as Non-AMT Subordinated Indebtedness.

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(ii) (A) it will take or cause to be taken such actions that may be required of it for the interest on the Tax-Exempt Subordinated Indebtedness to be and to remain excluded from gross income for federal income tax purposes, (B) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (C) it, or persons acting for it, will, among other acts of compliance, (1) apply the proceeds of the Tax-Exempt Subordinated Indebtedness to the governmental purposes of the borrowing, (2) restrict the yield on investment property, (3) make timely and adequate payments to the federal government, (4) maintain books and records and make calculations and reports, and (5) refrain from certain uses of those proceeds and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

(b) Further Actions. The Director of Finance, or any other officer of the City having responsibility for issuance of the 2024 Subordinated Indebtedness, is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the 2024 Subordinated Indebtedness as the City is permitted or required to make or give under the federal income tax laws, any of the elections provided for in or available under the Code for the purpose of assuring, enhancing or protecting the favorable tax treatment or status of the 2024 Subordinated Indebtedness or interest thereon, or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments of penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the 2024 Subordinated Indebtedness, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the 2024 Subordinated Indebtedness, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the 2024 Subordinated Indebtedness, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the 2024 Subordinated Indebtedness.

Section 11. Additional Documents.

The Mayor, the Director of Finance, the Director of Port Control, the Director of Law and other City officials as appropriate under the Charter are authorized to sign and deliver such instruments, certificates and documents as are necessary or appropriate to consummate the transactions authorized by this Ordinance, the Letter of Credit and/or Reimbursement Agreement, the Revolving Credit Agreement, the Supplemental Indentures, the Indenture, the Dealer Agreement and any other agreements the Director of Finance deems necessary to establish the 2024 Revolving Line of Credit or the 2024 Commercial Paper Program.

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The Mayor, the Director of Finance, the Director of Port Control, the Director of Law and other City officials, as appropriate under the Charter, are authorized to make the necessary arrangements on behalf of the City to establish the date, location, procedure and conditions for the delivery of the 2024 Subordinated Indebtedness and to take all actions necessary to effect due signing, authentication and delivery of the 2024 Subordinated Indebtedness under the terms of this Ordinance, the Supplemental Indentures, the Letter of Credit and/or Reimbursement Agreement, the Revolving Credit Agreement, the Dealer Agreement, the Indenture, and any other agreements the Director of Finance deems necessary to establish the 2024 Revolving Line of Credit or the 2024 Commercial Paper Program. The Clerk of Council or other officials of the City as appropriate under the Charter shall furnish the Dealer, Bank, Letter of Credit Bank, and Trustee, as necessary, with a true transcript of proceedings certified by the Clerk or other official, of all proceedings had with reference to the issuance of the applicable 2024 Subordinated Indebtedness along with such information for the records as is necessary to determine the regularity and validity of the issuance of the 2024 Subordinated Indebtedness.

Section 12. Official Statement for the Commercial Paper Notes.

The Mayor, the Director of Finance, the Director of Port Control and other City officials as appropriate under the Charter, are and each is authorized on behalf of the City to (i) prepare or cause to be prepared, and make or authorize modifications, completions or changes of or supplements to, disclosure documents in the form of an Official Statement relating to the issuance of the Commercial Paper Notes of one or more series. The distribution and use of one or more Official Statements is hereby authorized and approved.

Each of those officers is also authorized, on behalf of the City and in their official capacities, to complete each Official Statement with such modifications, changes and supplements as those officers shall approve or authorize. Each of those officers is further authorized to use and distribute, or authorize the use and distribution of, one or more final Official Statements and supplements thereto in connection with the issuance of the Commercial Paper Notes as may, in their judgment, be necessary or appropriate. Each of those officers is further authorized to sign and deliver on behalf of the City and in their official capacities, each final Official Statement and such certificates in connection with the accuracy of each Official Statement, as may in their judgment also be necessary or appropriate. The Director of Finance is authorized to contract for services for the production and distribution of Official Statements, including by printed and electronic means.

Section 13. Lien of Pledge.

The Airport Revenues are subject to the lien of the pledge under the Indenture without any physical delivery of the Airport Revenues or further act, and the lien of such pledge is valid and binding against all parties having claims of any kind against the City (irrespective of whether such parties have notice of such pledge and create a perfected security interest for all purposes of Chapter 1309, Ohio Revised Code) without the necessity for separation of delivery of the Airport Revenues or for the filing or recording of the Indenture or any other resolution or instrument by which such pledge is created or any certificate, statement or other document with respect to such pledge. The pledge of the Airport Revenues under the Indenture shall be effective and the money therefrom and thereof may be applied to the purposes for which pledged without necessity for any further act of appropriation.

Each draw or advance made by the City pursuant to a Revolving Credit Agreement or Letter of Credit and/or Reimbursement Agreement shall be Subordinated Indebtedness under the Indenture. The security for repayment of the 2024 Subordinated Indebtedness shall be Airport Revenues (as defined in the Indenture), provided that such security shall be subordinate to the lien of and security interest granted by the Indenture and subordinate in right of payment out of Airport Revenues to the prior payment of the Bond service charges on Revenue Bonds. Only the

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subordinate lien on Airport Revenues may secure repayment of the 2024 Subordinated Indebtedness under the applicable Supplemental Indenture.

Section 14. Municipal Advisors and Consultants.

The Director of Finance may obtain the services of one or more Municipal Advisors, from time to time, to assist the Director of Finance in making any of the determinations required by this Ordinance to be determined by the Director of Finance with respect to the 2024 Subordinated Indebtedness, Dealer Agreement, Revolving Credit Agreement and any Letter of Credit and/or Reimbursement Agreement. The Director of Finance may rely on the written advice of any Municipal Advisor so retained. The Director of Finance may obtain the services of one or more feasibility consultants, from time to time, to provide reports in connection with the issuance and sale of any 2024 Subordinated Indebtedness concerning the utilization and operation of the Airport System, debt service coverage, rates and charges or other matters. Any Municipal Advisor or consultant employed under the authority of this Ordinance shall be disinterested in the transaction and be independent of the underwriters or counterparties and any other party interested in the transaction.

Section 15. Appointment of Successor Trustee.

The Director of Finance is hereby authorized to appoint a successor Trustee in the event that the current Trustee, The Bank of New York Mellon Trust Company, N.A., shall resign or be removed, or be dissolved or otherwise become incapable of acting as Trustee under the Indenture, or in case it shall be taken under the control of any public officer or officers or of a receiver appointed by a court, in accordance with the provisions of Section 12.08 of the Trust Indenture.

Section 16. Authorization and Requirement of Declarations of Official Intent.

The Director of Finance, in consultation with the Director of Port Control, is authorized to prepare and sign declarations of official intent in the form required by United States Treasury Regulations §1.150-2 (the "Reimbursement Regulations") with respect to original expenditures to which the Reimbursement Regulations apply, to be made from money temporarily advanced for improvements to the Airport System and that is reasonably expected to be reimbursed from the proceeds of Tax-Exempt Subordinated Indebtedness or other obligations; to make appropriate reimbursement and timely allocations from the proceeds of the Tax-Exempt Subordinated Indebtedness or other obligations to reimburse such original expenditures; and to take any other actions as may be appropriate, all at the times and in the manner required under the Reimbursement Regulations in order for the reimbursement to be treated as an expenditure of such proceeds for purposes of Sections 103 and 141 to 150 of the Code. No advance from any fund or account or order for payment may be made for original expenditures (other than expenditures excepted from such requirement under the Reimbursement Regulations) that are to be reimbursed subsequently from proceeds of Tax-Exempt Subordinated Indebtedness or other obligations, unless a declaration of official intent with respect thereto is made within the time required by the Reimbursement Regulations.

Section 17. Open Meeting Determination.

It is found and determined that all formal actions of the Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of the Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all applicable legal requirements.

Ordinance No. 319-2024 AS AMENDED

Section 18. Separability.

Each section of this Ordinance and each subdivision of any section is declared to be independent, and the finding or holding of any section or subdivision of any section to be invalid or void shall not be deemed or held to affect the validity of any other section or subdivision of this Ordinance.

Section 19. Recitals.

It is determined and recited that all acts, conditions and things necessary to be done precedent to and in the issuing of the 2024 Subordinated Indebtedness in order to make them legal, valid and binding special obligations of the City will have happened, been done and performed or will happen, be done and performed in regular and due form as required by law; and that no limitation of indebtedness or taxation, either statutory or constitutional, is applicable to the issuance of the 2024 Subordinated Indebtedness.

Section 20. Sunset of Authorization.

The authority granted by Section 2 of this Ordinance to issue the 2024 Subordinated Indebtedness shall expire three years from the effective date of this Ordinance. If an Official Statement is distributed with respect to the establishment of the 2024 Commercial Paper Program under the authority of this Ordinance at any time within the three-year period following its effective date, then the authority granted by this Ordinance shall not expire as to that establishment of the 2024 Commercial Paper Program. The Director of Finance shall notify the Chairman of the Finance Committee and the Clerk of this Council of the initiation of the issuance of any 2024 Subordinated Indebtedness under the authority of this Ordinance.

Section 21. Emergency.

This ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

DR:nl
3-18-2024
FOR: Director Abonamah

Ord. No. 319-2024 AS AMENDED

REPORT
after second Reading

By Council Member Griffin (by departmental request)

AN EMERGENCY ORDINANCE

AUTHORIZING THE ESTABLISHMENT OF AND ISSUANCE BY THE CITY OF CLEVELAND OF CITY OF CLEVELAND AIRPORT SYSTEM SUBORDINATED INDEBTEDNESS IN THE FORM OF REVOLVING LINES OF CREDIT AND/OR A COMMERCIAL PAPER PROGRAM IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED ONE HUNDRED AND SEVENTY-FIVE MILLION DOLLARS (\$175,000,000) AT ANY ONE TIME TO PAY COSTS OF IMPROVING THE AIRPORT SYSTEM; AUTHORIZING ONE OR MORE REVOLVING CREDIT AGREEMENTS, REIMBURSEMENT AGREEMENTS, OFFICIAL STATEMENTS, DEALER AGREEMENTS, SUPPLEMENTAL INDENTURES, NOTES EVIDENCING SUBORDINATED INDEBTEDNESS AND OTHER AGREEMENTS RELATED TO SUBORDINATED INDEBTEDNESS; AND AUTHORIZING AND APPROVING RELATED MATTERS.

READ FIRST TIME

REPORTS

and referred to
by the council

CITY CLERK

READ SECOND TIME

by the council

CITY CLERK

READ THIRD TIME

by the council

PRESIDENT

CITY CLERK

APPROVED

MAYOR

Recorded Vol. _____ Page _____
Published in the City Record _____