
RESIDUAL TOT FUND COOPERATIVE AGREEMENT

DATED _____, 2024

Among

COUNTY OF HAMILTON, OHIO

and

CITY OF CINCINNATI, OHIO,

For certain limited purposes, the **Convention Facilities Authority for Hamilton County, Ohio** and the **Greater Cincinnati Convention and Visitors Bureau, Inc.** acknowledge and consent to certain matters as set forth herein.

All as such matters relate to the

CONVENTION CENTER

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Acknowledgement and Consent (Convention Facilities Authority for Hamilton County, Ohio)
Acknowledgement and Consent (Greater Cincinnati Convention and Visitors Bureau, Inc.)
APPENDIX A-1 Certificate of Fiscal Officer (County)
APPENDIX A-2 Certificate of Fiscal Officer (City)

THIS RESIDUAL TOT FUND COOPERATIVE AGREEMENT (this “Residual TOT Agreement”) is made and entered into this ____ day of _____, 2024, by and among (a) the **COUNTY OF HAMILTON, OHIO** (the “County”), a county and political subdivision of the State of Ohio (the “State”), duly organized and validly existing under the laws of the State, and (b) the **CITY OF CINCINNATI, OHIO** (the “City” and together with the County, the “Parties” or each in an individual capacity, a “Party”), a municipal corporation and political subdivision of the State, duly organized and validly existing under the laws of the State, in accordance with the terms and conditions set forth herein (all words and terms used herein with initial capital letters being used as defined in Article I of this Residual TOT Agreement). In addition, for certain limited purposes, the *Convention Facilities Authority for Hamilton County, Ohio* (the “CFA”), a body corporate and politic, duly organized and existing under the laws of the State, and the *Greater Cincinnati Convention and Visitors Bureau, Inc.* (the “GCCVB”), a not-for-profit corporation, duly organized and existing under the laws of the State, acknowledge and consent to certain matters as set forth herein.

WHEREAS, the County, the City, and the CFA entered into the 2004 Original Cooperative Agreement in order to facilitate and to prioritize the application of the County 3.50% Tax, the City 2002 1.50% Tax, and the City 2002 1.00% Tax, and to provide for the application of the City 1969 1.50% Tax to certain approved operating and maintenance expenses; and

WHEREAS, the County, the City, the Port Authority, and the Trustee entered into the Cooperative Agreement, dated the date hereof, thereby amending and restating the 2004 Original Cooperative Agreement for various purposes, including without limitation, to provide for the creation of the TOT Revenue Fund into which the County Net Tax Contribution and the City Net Tax Contribution shall be applied, contributed, and transferred; and

WHEREAS, pursuant to Sections 2.4(e) and 3.4(e) of the Cooperative Agreement, the County and the City have directed and instructed the Trustee to transfer to the County all moneys and related investments and funds remaining in the TOT Revenue Fund, including the portion of such moneys and related investments and funds consisting of amounts derived from the County Net Tax Contribution and the City Net Tax Contribution (as further described herein, the “Residual TOT Funds”), in accordance with this Residual TOT Agreement; and

WHEREAS, pursuant to Section 5.6 of the Cooperative Agreement, the Trustee has agreed to provide for the transfer of moneys in the TOT Revenue Fund, as Residual TOT Funds, in accordance with Sections 2.4(e) and 3.4(e) of the Cooperative Agreement; and

WHEREAS, the Parties desire to make such agreements, authorizations, representations, warranties, and covenants as are necessary and appropriate to transfer, deposit, apply, and allocate the Residual TOT Funds upon mutually agreeable terms and conditions; and accordingly, the Parties have determined to enter into this Residual TOT Agreement on the terms as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual agreements, authorizations, representations, warranties, and covenants hereinafter contained, the Parties agree as follows (provided that any obligation of the County and/or the City hereunder shall never constitute a general debt of the County or the City or give rise to any pecuniary liability of the County or the

City, but shall be payable solely from the Residual TOT Funds, all as provided in this Residual TOT Agreement):

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ARTICLE I
DEFINED TERMS; INTERPRETATION; CAPTIONS

SECTION 1.1. Use of Defined Terms.

In addition to the words and terms defined elsewhere in this Residual TOT Agreement or by reference to another document, the words and terms set forth in Section 1.2 hereof shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

SECTION 1.2. Definitions.

“Authorized Representative” or “Authorized Representatives” means the Person or Persons at the time designated to act on behalf of each Party by written authorization furnished to one or more of the Parties containing the specimen signature of such authorized Person or Persons. Such certificate may designate an alternate or alternates who shall have the same authority, duties, and powers as the Authorized Representative or Authorized Representatives. In the event that all such incumbents become unavailable or otherwise unable to act and a Party fails to designate at least one alternate or replacement, then promptly after written notice is provided to the applicable Party or Parties of such unavailability or inability to act, the County Administrator of the County, the City Manager of the City, respectively, shall be the Authorized Representative for an affected Party or Parties.

“Business Day” means shall mean a day which is not (a) a Saturday or Sunday, (b) a day on which banking institutions in the State are authorized by law to close, or (c) a State holiday as defined in Section 124.19 of the Ohio Revised Code, as such section may be amended from time to time.

“Capital Improvement Reserve Amount” shall have the meaning set forth in the Cooperative Agreement.

“Capital Improvement Reserve Fund” shall have the meaning set forth in the Cooperative Agreement.

“City” means the “City” as defined in the preambles hereof.

“City Pro-Rata Portion of Residual TOT Funds” means the product of (a) the amount of Residual TOT Funds remaining in the Residual TOT Revenue Fund after the distributions described in Sections 2.3(c)(i) and 2.3(c)(ii) hereof, multiplied by (b) the ratio resulting from dividing the City Net Tax Contribution, as the numerator, by the sum of the City Net Tax Contribution plus the County Net Tax Contribution.

“City 1969 1.50% Tax” shall have the meaning set forth in the Cooperative Agreement.

“City 2002 1.50% Tax” shall have the meaning set forth in the Cooperative Agreement.

“City 2002 1.00% Tax” shall have the meaning set forth in the Cooperative Agreement.

“City Net Tax Contribution” shall have the meaning set forth in the Cooperative Agreement.

“CFA” means the “CFA” as defined in the preambles hereof.

“Convention Center” shall have the meaning set forth in the Cooperative Agreement.

“Cooperative Agreement” means the Amended and Restated Cooperative Agreement dated _____, 2024, by and among the County, the City, the Port Authority, and the Trustee (with the CFA and the GCCVB acknowledging and consenting to certain matters set forth therein).

“County” means the “County” as defined in the preambles hereof.

“County Net Tax Contribution” shall have the meaning set forth in the Cooperative Agreement.

“County Pro-Rata Portion of Residual TOT Funds” means the product of (a) the amount of Residual TOT Funds remaining in the Residual TOT Revenue Fund after the distributions described in Sections 2.3(c)(i) and 2.3(c)(ii) hereof, multiplied by (b) the ratio resulting from dividing the County Net Tax Contribution, as the numerator, by the sum of the City Net Tax Contribution plus the County Net Tax Contribution.

“County TOT” shall have the meaning set forth in the Cooperative Agreement.

“Effective Date” means the date of execution of this Residual TOT Agreement by the County and the City.

“GCCVB” means the “GCCVB” as defined in the preambles hereof.

“GCCVB Cumulative Deficit” means the amount, if any, by which (a) the cumulative GCCVB Residual Obligation since the Effective Date exceeds, (b) the cumulative GCCVB Residual Payment since the Effective Date, as determined as of December 31 of the immediately preceding calendar year, or if later the date on which the GCCVB Residual Amount is paid to the GCCVB with respect to such prior calendar year; provided, however, that the amount of the GCCVB Cumulative Deficit shall not increase at any time after the calendar year in which the GCCVB Residual Amount equals three million dollars (\$3,000,000). By way of example, if the amount of the GCCVB Residual Amount equals \$3,000,000 in calendar year 2027, the Cumulative Deficit may not increase in calendar year 2028, calendar year 2029, or any subsequent calendar year.

“GCCVB Residual Amount” means an amount in each calendar year not to exceed the lesser of (a) three million dollars (\$3,000,000), and (b) sixty-three percent (63%) of the Residual TOT Funds.

“GCCVB Residual Catch-Up Amount” means [an amount to be determined in each calendar year pursuant to a formula to be mutually agreed upon by the City, the County, and the GCCVB, which amount shall not exceed the GCCVB Cumulative Deficit at the time of the payment of any such amount.]

“GCCVB Residual Obligation” means an amount of \$3,000,000 per calendar year.

“GCCVB Residual Payment” means the sum of the GCCVB Residual Amount and the GCCVB Residual Catch-Up Amount, if any, distributed to the GCCVB in a particular calendar year.

“Northern Communities” means, collectively, suburban Hamilton County political subdivisions with substantial meeting, convention, and tourism infrastructure, as determined in the sole discretion of the County and which as of the Effective Date include the City of Sharonville, Ohio, and the City of Blue Ash, Ohio.

“Northern Communities Convention Facilities” means the convention facilities owned, operated, or controlled by one or more of the Northern Communities, including without limitation the Sharonville Convention Center, and the Cooper Creek Event Center.

“Northern Communities Initial Contribution Cap” means two million two hundred seventy thousand dollars (\$2,270,000).

“Northern Communities Convention Facilities Costs” means operating costs and capital costs of the Northern Convention Facilities to the extent such costs are eligible to be paid or reimbursed with County TOT Revenue.

“Parties” means “Parties” as defined in the preambles hereof.

“Party” means “Party” as defined in the preambles hereof.

“Permitted Investments” means investments which are consistent with investments and securities set forth in Chapter 135 of the Ohio Revised Code and not inconsistent with permitted investments pursuant to the City’s Municipal Charter, the City’s investment policy, and the County’s investment policy.

“Person” or words importing persons means, firms, associations, partnerships (including, without limitation, general, limited and limited liability partnerships), joint ventures, societies, estates, trusts, corporations, limited liability companies, public or governmental bodies, other legal entities, and natural persons.

“Port Authority” means the Port of Greater Cincinnati Development Authority, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State.

“Residual TOT Agreement” means this “Residual TOT Agreement” as defined in the preambles hereof, as amended, supplemented, restated, and/or renewed from time to time.

“Residual TOT Funds” shall have the meaning set forth in the Cooperative Agreement.

“Residual TOT Revenue Fund” means the Residual Transient Occupancy Tax Revenue Fund, a County-held fund created and administered pursuant to the terms of this Residual TOT Agreement, into which the Residual TOT Funds shall be deposited.

“TOT Revenue Fund” shall have the meaning set forth in the Cooperative Agreement.

“Trustee” shall have the meaning set forth in the Cooperative Agreement.

“2004 Original Cooperative Agreement” shall have the meaning set forth in the Cooperative Agreement.

SECTION 1.3. Interpretation.

Any reference herein to the County or the City, or to any governing authority member or officer thereof includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code, or to the City’s municipal code, or to any statute of the United States of America, includes that section, provision or chapter as amended, supplemented, renewed, restated, modified, revised, or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the County or the City under this Residual TOT Agreement.

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

SECTION 1.4. Captions and Headings.

The captions and headings in this Residual TOT Agreement are solely for convenience of reference and in no way define, limit, or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

(End of Article I)

**ARTICLE II
COUNTY REPRESENTATIONS AND COVENANTS**

SECTION 2.1. Representations of County.

The County represents that:

- (a) it is duly organized and validly existing under the laws of the State;
- (b) it has duly accomplished all conditions necessary to be accomplished by it prior to the execution and delivery of this Residual TOT Agreement;
- (c) it is not in violation of or in conflict with any provisions of the laws of the State which would impair its ability to carry out its obligations contained in this Residual TOT Agreement;
- (d) it is empowered to enter into the transactions contemplated by this Residual TOT Agreement;
- (e) it has duly authorized the execution, delivery and performance of this Residual TOT Agreement; and
- (f) it will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Residual TOT Agreement by any successor public body.

SECTION 2.2. Covenant to Direct the Deposit of Residual TOT Funds.

Other than as permitted by the terms of the Cooperative Agreement, the County hereby covenants not to take any action to repeal or rescind its direction to the Trustee to deliver the Residual TOT Funds to the County for deposit into the Residual TOT Revenue Fund to be invested, applied, allocated, and distributed in accordance with the terms of this Residual TOT Agreement.

SECTION 2.3. Residual TOT Revenue Fund Establishment; Deposit to Residual TOT Revenue Fund; and Application and Allocation of Residual TOT Funds.

- (a) *Residual TOT Revenue Fund.* The County agrees to create the Residual TOT Revenue Fund, which Residual TOT Revenue Fund shall be held by a financial institution determined by the County in its sole discretion, provided that the County shall promptly notify the City of the identity of such financial institution and any change in the institution with which any Residual TOT Funds are deposited. The Residual TOT Revenue Fund shall serve as the collective source of revenue resulting from the distribution of the Residual TOT Funds pursuant to the Cooperative Agreement for distribution as provided in this Residual TOT Agreement. Moneys in the Residual TOT Revenue Fund may be invested in a manner consistent with Permitted Investments in the sole discretion of the County after consultation with the City.

(b) ***Deposit to Residual TOT Revenue Fund.*** As directed by the County pursuant to Section 2.4(e) of the Cooperative Agreement, the Trustee shall transfer the Residual TOT Funds from the TOT Revenue Fund to the County on December 2 of each year, commencing on December 2, 20[24]. The County shall accept the Residual TOT Funds and deposit the Residual TOT Funds into the Residual TOT Revenue Fund upon receipt for application in a manner consistent with this Residual TOT Agreement.

(c) ***Application of Residual TOT Funds.*** Subject to the requirements of Section 2.4 hereof, each year after the deposit of the Residual TOT Funds into the Residual TOT Revenue Fund and prior to December 31 of each such year, the County agrees to and shall distribute all Residual TOT Funds held in the Residual TOT Revenue Fund in the amounts and in the order of priority as set forth below:

(i) to any institution with which the Residual TOT Funds have been deposited, the fees due and payable to such institution for services provided in connection with the deposit, application, and disbursement of Residual TOT Funds as described in this Residual TOT Agreement;

(ii) to the GCCVB an amount equal to the GCCVB Residual Amount;

(iii) during any year in which a GCCVB Cumulative Deficit exists, to the GCCVB the GCCVB Residual Catch-Up Amount;

(iv) to the City and the County in no particular order, the remainder of the Residual TOT Funds as follows:

(A) to the City the City Pro-Rata Portion of Residual TOT Funds;

(B) to the County the County Pro-Rata Portion of Residual TOT Funds other than amounts to be transferred to the Capital Improvement Reserve Fund pursuant to Section 2.3(d)(ii)(B)(II) hereof; and

(C) to the City seventeen percent (17%) of the County Pro-Rata Portion of Residual TOT Funds required to be deposited into the Capital Improvement Reserve Fund pursuant to Section 2.3(d)(ii)(B)(II) hereof.

(d) ***Application of County Pro-Rata Portion of Residual TOT Funds.*** The County agrees to distribute the County Pro-Rata Portion of Residual TOT Funds, on a pro-rata basis between the distributions to be made pursuant to Sections 2.3(d)(i) and (ii) hereof, as follows:

(i) Forty-five percent (45%) of the County Pro-Rata Portion of Residual TOT Funds shall be utilized by the County to advance initiatives, functions, and programs intended to generate additional County TOT revenue, as determined appropriate by the Board of County Commissioners of the County in consultation with the CFA, initially in the amounts and in the order of priority as set forth below:

(A) an amount up to but not to exceed three hundred fifty thousand dollars (\$350,000) annually shall be used to pay the costs to operate and maintain the Cincinnati Black Music Walk of Fame located within The Banks project within the City;

(B) an amount up to but not to exceed three hundred fifty thousand dollars (\$350,000) annually shall be used to pay the costs of marketing initiatives at the direction of the GCCVB;

(C) County Pro-Rata Portion of Residual TOT Funds to be distributed pursuant to Section 2.3(d)(i) and remaining unallocated after the allocations described in Sections 2.3(d)(i)(A) and (B) hereof shall be further allocated in equal amounts, and in no particular priority, to each of the purposes described in Sections 2.3(d)(i)(A) and (B) hereof to the extent the aggregate amount so allocated to each such purpose pursuant to Sections 2.3(d)(i)(A) through (C) hereof does not exceed \$500,000 respectively; and

(D) County Pro-Rata Portion of Residual TOT Funds to be distributed in accordance with Section 2.3(d)(i) hereof remaining unallocated after the allocations described in Section 2.3(d)(i)(C) hereof may be transferred to any other accounts and/or fund, and used by the County as permitted by law, as determined to be necessary and appropriate by the County in consultation with the CFA.

(ii) Fifty-five percent (55%) of the County Pro-Rata Portion of Residual TOT Funds shall be utilized by the County to pay Northern Convention Facilities Costs and operating and capital costs of the Convention Center, as determined necessary and appropriate by the Board of County Commissioners of the County, as set forth below:

(A) All amounts allocated and distributed in accordance with Section 2.3(d)(ii), equal to equal to fifty-five percent (55%) of the County Pro-Rata Portion of Residual TOT Funds, shall be distributed to or for the benefit of the Northern Communities for the payment of Northern Communities Convention Facilities Costs which are determined to be necessary and appropriate in the sole discretion of the County, until the aggregate amount distributed pursuant to this Section 2.3(d)(ii) equals the Northern Communities Initial Contribution Cap.

(B) All amounts allocated and distributed in accordance with Section 2.3(d)(ii) in excess of the Northern Communities Initial Contribution Cap, equal in the aggregate to fifty-five percent (55%) of the County Pro-Rata Portion of Residual TOT Funds, shall be allocated and distributed in the amounts and in the order of priority as follows:

(I) Thirty-eight percent (38%) of the County Pro-Rata Portion of Residual TOT Funds shall be distributed to or for the

benefit of the Northern Communities for the payment of Northern Communities Convention Facilities Costs which are determined to be necessary and appropriate in the sole discretion of the County;

(II) On or before December 31 of each applicable year, Seventeen percent (17%) of the County Pro-Rata Portion of Residual TOT Funds shall be transferred to the City for deposit into the Capital Improvement Reserve Fund pursuant to Section 2.3(c)(iv)(C) hereof. For the avoidance of doubt, the deposit to the Capital Improvement Reserve Fund pursuant to this Section 2.3(d)(ii)(B) shall be in addition to, and shall not constitute a portion of, the County's contribution towards funding the Capital Improvement Reserve Amount as described in the Cooperative Agreement.

(e) **Unconditional Obligation.** Provided adequate Residual TOT Funds exist, the obligations of the County under this Section 2.3 with respect to the Residual TOT Funds shall be absolute and unconditional. The County shall appropriate, make, and apply the Residual TOT Funds in the manner so directed herein and to the appropriate recipients, without abatement, diminution or deduction regardless of any cause or circumstances whatsoever, including but not limited to, any defense, setoff, recoupment or counterclaim that the County may have or assert against the City, any subsequent depositor of the Residual TOT Funds, the GCCVB, or any other Person.

SECTION 2.4. Agreement Regarding Accounting and Reporting of Residual TOT Funds and County TOT.

(a) No later than **[five (5) Business Days prior]** to each distribution of Residual TOT Funds pursuant to Section 2.3(c) hereof, the County shall submit to the City and the GCCVB written notice of the amounts to be distributed by or on behalf of the County pursuant to Section 2.3 hereof, along with the calculations supporting the County's determination of such amounts. Absent written objection from the City or the GCCVB **[within ten (10) days]** of the City and the GCCVB's written acknowledgment of receipt of such notice, the County may proceed with the distribution of Residual TOT Funds in accordance with Section 2.3(c) hereof.

(b) Upon receipt by the County of a timely objection by the City or the GCCVB to the amounts or recipients of the County's intended distributions as described in the notice provided to the City and the GCCVB pursuant to Section 2.4(a) hereof, the distributions to be made pursuant to Section 2.3(c) hereof shall not be made until the County, City, and GCCVB mutually agree upon the amounts and recipients of the Residual TOT Funds to be distributed; provided, however, that any City or GCCVB objections and agreements regarding the distribution of the Residual TOT Funds under this Section 2.4(b) shall be limited to the calculations of the amounts of such distributions and related quantifiable elements of Residual TOT Funds distributions.

(c) No later than ten (10) Business Days after the distributions to be made by or on behalf of the County pursuant to Section 2.3(c) hereof, the County shall provide to the City and the GCCVB written financial information detailing any distribution of Residual TOT Funds made by the County pursuant to Section 2.3(c) hereof.

(d) Upon the request of the City, the County shall provide to the City written financial information detailing amounts and timing of the receipt, application, and distribution by the County of the County TOT. Such financial information shall be provided by the County to the City in a reasonably prompt manner and no later than 10 Business Days upon receipt by the County of such request.

SECTION 2.5. Agreements of County Subject to Enforcement by Mandamus.

(a) All of the obligations under this Article II are established as duties specifically enjoined by law and resulting from an office, trust or station upon the County within the meaning of Ohio Revised Code Section 2731.01, providing for enforcement by writ of mandamus.

(End of Article II)

**ARTICLE III
CITY REPRESENTATIONS AND COVENANTS**

SECTION 3.1. Representations of City.

The City represents that:

- (a) it is duly organized and validly existing under the laws of the State;
- (b) it has duly accomplished all conditions necessary to be accomplished by it prior to the execution and delivery of this Residual TOT Agreement;
- (c) it is not in violation of or in conflict with any provisions of the laws of the State which would impair its ability to carry out its obligations contained in this Residual TOT Agreement;
- (d) it is empowered to enter into the transactions contemplated by this Residual TOT Agreement;
- (e) it has duly authorized the execution, delivery and performance of this Residual TOT Agreement; and
- (f) it will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Residual TOT Agreement by any successor public body.

SECTION 3.2. Covenant to Direct the Deposit of Residual TOT Funds.

Other than as permitted by the terms of the Cooperative Agreement, the City hereby covenants not to take any action to repeal or rescind its direction to the Trustee to deliver the Residual TOT Funds to the County for deposit into the Residual TOT Revenue Fund to be invested, applied, allocated, and distributed in accordance with the terms of this Residual TOT Agreement.

SECTION 3.3. Deposit to Residual TOT Revenue Fund; and Application and Allocation of Residual TOT Funds.

- (a) ***Residual TOT Revenue Fund.*** The City recognizes and supports the establishment of the Residual TOT Revenue Fund by the County for the purpose of facilitating the arrangements under this Residual TOT Agreement and relies upon the ongoing existence and maintenance of the Residual TOT Revenue Fund, as well as the notification obligations of the County hereunder, for purposes of the City's ongoing compliance with the City's agreements and obligations under this Residual TOT Agreement.
- (b) ***Deposit to Residual TOT Revenue Fund.*** As directed by the City pursuant to Section 3.4(e) of the Cooperative Agreement, the Trustee shall transfer and the County shall accept the Residual TOT Funds from the TOT Revenue Fund to the Residual TOT Revenue Fund on December 2 of each year, commencing on December 2, 20[24].

(c) ***Application of Residual TOT Funds.*** Subject to Section 2.4 hereof, the City directs the County to distribute or cause to be distributed the Residual TOT Funds in accordance with Section 2.3(c) hereof and agrees to the distribution of Residual TOT Funds in the amounts and in the priority as set forth in Section 2.3(c) hereof.

(d) ***Application of City Pro-Rata Portion of Residual TOT Funds.*** Commencing on the Effective Date, the City hereby directs the County to remit one hundred percent (100%) of the City Pro-Rata Portion of Residual TOT Funds to the City for deposit into the Capital Improvement Reserve Fund. For the avoidance of doubt, the deposit to the Capital Improvement Reserve Fund pursuant to this Section 3.3(d) hereof shall be in addition to, and shall not constitute a portion of, the City's contribution towards funding the Capital Improvement Reserve Amount as described in the Cooperative Agreement.

(e) ***Remaining City Pro-Rata Portion of Residual TOT Funds.*** Other than the portion of the City Pro-Rata Portion of Residual TOT Funds required to be deposited in the Capital Improvement Reserve Fund pursuant to Section 3.3(d) hereof, the remaining City-Pro-Rata Portion of Residual TOT Funds may be used by the City as permitted by law in the sole discretion of the City.

(f) ***Unconditional Obligation.*** Provided adequate Residual TOT Funds exist, the obligations of and direction by the City under this Section 3.3 with respect to the Residual TOT Funds shall be absolute and unconditional. The City shall take all appropriate actions necessary to make available and apply the Residual TOT Funds in the manner so directed and described herein, without abatement, diminution or deduction regardless of any cause or circumstances whatsoever, including but not limited to, any defense, setoff, recoupment or counterclaim that the City may have or assert against the County, any subsequent depositor of the Residual TOT Funds, the GCCVB, or any other Person.

SECTION 3.4. Agreement Regarding Acknowledgment of Notice and Reporting of City 2002 1.00% Tax and City 2002 1.50% Tax.

(a) Upon receipt of written notice from the County pursuant to Section 2.4(a) hereof, the City shall promptly provide written acknowledgment of such notice to the County within five (5) Business Days of receipt, including any objection to the amounts to be distributed by or at the direction of the County pursuant to Section 2.3(c) hereof.

(b) Any written objection provided by the City to the County pursuant to Section 3.4 hereof shall include a quantitative basis for such objection, and the City agrees to cooperate with the County, and the GCCVB as applicable, to expeditiously resolve inconsistencies among the Parties regarding the amounts to be distributed under Section 2.3(c) hereof.

(c) Upon the request of the County, the City shall provide to the County written financial **[reports] [information]** detailing amounts and timing of the receipt, application, and distribution by the City of the City 2002 1.00% Tax and the City 2002 1.50% Tax. Such financial information shall be provided by the City to the County in a reasonably

prompt manner and no later than **[10 Business Days]** upon receipt by the City of such request.

SECTION 3.5. Agreements of City subject to Enforcement by Mandamus.

(a) All of the obligations under this Article III are established as duties specifically enjoined by law and resulting from an office, trust or station upon the City within the meaning of Ohio Revised Code Section 2731.01, providing for enforcement by writ of mandamus.

(End of Article III)

**ARTICLE IV
MISCELLANEOUS**

SECTION 4.1. Term of Agreement.

This Residual TOT Agreement shall be and remain in full force and effect from the Effective Date until the date upon which (a) the Cooperative Agreement is no longer in effect, and (b) all funds on deposited in the Residual TOT Revenue Fund have been distributed in accordance with the terms of this Residual TOT Agreement.

SECTION 4.2. Notices.

All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to the County, the City, or the GCCVB shall also be given to the others. The County, the City, or the GCCVB, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

“Notice Address” means:

<i>As to the County:</i>	Board of County Commissioners of Hamilton County, Ohio County Administration Building 138 E. Court Street, Room 603 Cincinnati, Ohio 45202 Attention: President
<i>With a copy to:</i>	Hamilton County Administrator County Administration Building 138 E. Court Street, Room 603 Cincinnati, Ohio 45202
<i>And with a copy to:</i>	County Prosecuting Attorney of Hamilton County, Ohio William Howard Taft Center 230 East 9 th Street, Room 4000 Cincinnati, Ohio 45202
<i>As to the City:</i>	Office of the City Manager City of Cincinnati, Ohio City Hall 801 Plum Street, Room [150] Cincinnati, Ohio 45202 Attention: City Manager
<i>With a copy to:</i>	Department of Finance City of Cincinnati, Ohio City Hall 801 Plum Street, Room [250] Cincinnati, Ohio 45202 Attention: Director

<i>And with a copy to:</i>	Department of Law City of Cincinnati, Ohio City Hall 801 Plum Street, Room [214] Cincinnati, Ohio 45202 Attention: City Solicitor
<i>And with a copy to:</i>	Cincinnati Convention Center City of Cincinnati, Ohio 535 Elm Street Cincinnati, Ohio 45202 Attention: Manager
<i>As to the CFA:</i>	Hamilton County Convention Facilities Authority 138 E. Court Street, Room 603 Cincinnati, OH 45202 Attn: Chairperson
<i>With a copy to:</i>	Hamilton County Convention Facilities Authority 138 E. Court Street, Room 603 Cincinnati, OH 45202 Attn: Chairperson
<i>As to the GCCVB:</i>	_____ _____ _____
<i>With a copy to:</i>	_____ _____ _____

SECTION 4.3. Binding Effect.

This Residual TOT Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the County and the City and their respective permitted successors and assigns provided that this Residual TOT Agreement may not be assigned by the County or the City. This Residual TOT Agreement may be enforced only by the Parties, their assignees and others who may, by law, stand in their respective places.

SECTION 4.4. Extent of Covenants; No Personal Liability.

All covenants, obligations and agreements of the County and the City contained in this Residual TOT Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the County or the City other than his or her official capacity.

SECTION 4.5. Effective Date.

This Residual TOT Agreement shall become effective and binding on the Effective Date.

SECTION 4.6. Amendments, Supplements and Restatements.

This Residual TOT Agreement may be amended, supplemented, renewed, and/or restated only by written agreement of the County and the City duly authorized by their respective governing bodies and signed by an Authorized Representative or Authorized Representatives; provided, however that provisions of this Residual TOT Agreement related to amounts payable to or for the benefit of the Northern Communities from the County Pro-Rata Portion of Residual TOT Funds are subject to approval by the CFA; and provided further, however, that the distributions described in Section 2.3(d) hereof may be altered in the discretion of the County, upon the approval of the CFA, without approval of the City so long as (a) prior to receipt of the entire Northern Communities Initial Contribution Cap by the Northern Communities, the percentage applied pursuant to Section 2.3(d)(ii) hereof is not reduced below fifty-five percent (55%) of the County Pro-Rata Portion of Residual TOT Funds, (b) regardless of whether the entire Northern Communities Initial Contribution Cap has been received by the Northern Communities, (i) the percentage applied pursuant to Section 2.3(d)(ii)(B)(I) hereof is not reduced below seventeen percent (17%) of the County Pro-Rata Portion of Residual TOT Funds, and (ii) regardless of whether the entire Northern Communities Initial Contribution Cap by the Northern Communities, the County Pro-Rata Portion of Residual TOT Funds applied pursuant to Section 2.3(d)(ii)(B)(I) continues to be deposited into the Capital Improvement Reserve Fund.

SECTION 4.7. Execution Counterparts.

This Residual TOT Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument. Executed counterparts transmitted electronically shall be binding on the parties hereto. The exchange of copies of this Residual TOT Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Residual TOT Agreement as to the parties hereto and may be used in lieu of the original Residual TOT Agreement and signature pages for all purposes.

SECTION 4.8. Severability.

If any provision of this Residual TOT Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

SECTION 4.9. Limited Third-Party Beneficiaries.

The provisions of this Residual TOT Agreement are for the exclusive benefit of the Parties hereto and not for the benefit of any third person, other than the CFA, the GCCVB, and the

Northern Communities to the extent that rights, title, interests, responsibilities, duties, obligations are accepted, acknowledged, conferred upon, consented to, or otherwise assigned, contributed, hypothecated, pledged, and/or transferred. In addition, this Residual TOT Agreement shall not be deemed to have conferred any rights, express or implied, upon any third person unless otherwise expressly provided for herein.

SECTION 4.10. Governing Law.

This Residual TOT Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

(End of Article VI)

[Signature page to Residual TOT Agreement]

IN WITNESS WHEREOF, the County and the City have caused this Residual TOT Agreement to be duly executed in their respective names on the dates written below.

COUNTY OF HAMILTON, OHIO

By: _____
Name: _____
Title: _____
Date: _____

Approved as to form by the County Prosecutor

By: _____
Name: _____
Title: _____

CITY OF CINCINNATI, OHIO

By: _____
Name: _____
Title: _____
Date: _____

Approved as to form by the City Solicitor

By: _____
Name: _____
Title: _____

**ACKNOWLEDGEMENT AND CONSENT
(CONVENTION FACILITIES AUTHORITY FOR HAMILTON COUNTY, OHIO)**

The Convention Facilities Authority for Hamilton County, Ohio (“CFA”) hereby acknowledges and consents to the Residual TOT Agreement.

In consideration of responding to requests of the County to undertake certain responsibilities, while the Residual TOT Agreement remains in affect, the CFA hereby acknowledges and accepts its duties and responsibilities to advise the County on the allocation, distribution, and application of the County Pro-Rata Portion of Residual TOT Funds as described in the Residual TOT Agreement.

In addition, other than with respect to provisions of this Residual TOT Agreement related to amounts payable to or for the benefit of the Northern Communities from the County Pro-Rata Portion of Residual TOT Funds, which are subject to CFA approval, the CFA acknowledges and agrees that further amendments, supplements, and/or restatements of this Residual TOT Agreement may be made without its acknowledgement and/or consent.

**CONVENTION FACILITIES AUTHORITY
FOR HAMILTON COUNTY, OHIO**

By: _____
Name: _____
Title: _____
Date: _____

**ACKNOWLEDGEMENT AND CONSENT
(GREATER CINCINNATI CONVENTION AND VISITORS BUREAU, INC.)**

The Greater Cincinnati Convention and Visitors Bureau, Inc. (“GCCVB”) acknowledges and consents to the Residual TOT Agreement.

For the purpose of providing adequate resources for the operation and maintenance of the Convention Center located a 525 Elm Street, Cincinnati, Ohio, the GCCVB hereby acknowledges and accepts the GCCVB Residual Payment to be distributed to the GCCVB as set forth in this Residual TOT Agreement. In addition, the GCCVB acknowledges and agrees that amendments, supplements, and/or restatements of this Residual TOT Agreement may be made without its acknowledgement and/or consent provided that any such amendments, supplements, and/or restatements do not have a Material Adverse Effect on the amount of the GCCVB Residual Payment.

**GREATER CINCINNATI CONVENTION AND
VISITORS BUREAU, INC.**

By: _____
Name: _____
Title: _____
Date: _____

**APPENDIX A-1
CERTIFICATE OF FISCAL OFFICER
(COUNTY)**

Re: Residual TOT Fund Cooperative Agreement dated as of _____, 2024

The undersigned, County Auditor, as the fiscal officer of the County of Hamilton, Ohio (the "County") hereby certifies that the moneys required to meet the obligations of the County during the current fiscal year, as provided for in this Residual TOT Agreement have been lawfully appropriated by the County for such purposes and are in the treasury of the County or in the process of collection to the credit of an appropriate fund, free from any appropriation for any other purpose and from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

County Auditor

Dated: _____, 2024

APPENDIX A-2
CERTIFICATE OF FISCAL OFFICER
(CITY)

Re: Residual TOT Fund Cooperative Agreement dated as of _____, 2024

The undersigned, Director of Finance, as the fiscal officer of the City of Cincinnati, Ohio (the "City") hereby certifies that the moneys required to meet the obligations of the City during the current fiscal year, as provided for in this Residual TOT Agreement have been lawfully appropriated by the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any appropriation for any other purpose and from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Director of Finance

Dated: _____, 2024

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