

RESOLUTION APPROVING THE OPERATIONAL SUPPORT AGREEMENT WITH ASHTABULA COUNTY PORT AUTHORITY AND ASHTABULA COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES

WHEREAS, on April 3, 2020 the Ashtabula County Board of Commissioners, Ashtabula County Department of Environmental Services and the Ashtabula County Port Authority entered into an Operational Support Agreement for Plant C; and

WHEREAS, Doug Starkey, Director of the Ashtabula County Department of Environmental Services, and the Ashtabula County Port Authority agreed to the adoption of a new agreement for the operational support for Plant C, for the approval of the Board, to-wit:

PARTIES: Ashtabula County Department of Environmental Services, 36 W. Walnut St., Jefferson, OH 44047
Ashtabula County Commissioners, 25 West Jefferson St., Jefferson, OH 44047
Ashtabula County Port Authority, for Plant C at 2715 Lake Rd, Ashtabula, OH 44004

SCOPE: For the County to provide operation, maintenance and management services for wastewater and potable water systems at Plant C, per the agreement, exhibit A

COST: County fees and calculation of cost as described in support agreement, exhibit A

TERM: Retroactive to January 1, 2025

WHEREAS, this Board of Commissioners concurs with the recommendation of the Director and finds this agreement to be reasonable and necessary; now

THEREFORE, BE IT RESOLVED, By the Board of Commissioners of Ashtabula County, Ohio that the agreement noted above is approved in accordance with the copy now on file in this office.

**ASHTABULA COUNTY COMMISSIONERS
CERTIFICATION PAGE**

Resolution No. 2025-214

April 29, 2025

**RESOLUTION APPROVING THE OPERATIONAL SUPPORT AGREEMENT WITH
ASHTABULA COUNTY PORT AUTHORITY AND ASHTABULA COUNTY
DEPARTMENT OF ENVIRONMENTAL SERVICES**

Upon the motion of Kathryn L. Whittington, seconded by Casey R. Kozlowski.

VOTE:

J.P. Ducro IV

Aye

Casey R. Kozlowski

Aye

Kathryn L. Whittington

Aye

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.

Crystal Sturgill
Crystal Sturgill, Clerk of the Board
Board of County Commissioners
Ashtabula County, Ohio

Acting

OPERATIONAL SUPPORT AGREEMENT

This OPERATIONAL SUPPORT AGREEMENT ("Agreement") is made and entered into as of January 1, 2025 by and between Ashtabula County Port Authority ("Owner"), and the Ashtabula County Board of Commissioners by and through the Ashtabula County Department of Environmental Services ("Operator").

RECITALS

WHEREAS, Owner owns a raw water intake and distribution facility with certain onsite stormwater treatment systems permitted under Ohio NPDES Permit #31B00021 and regional industrial wastewater effluent infrastructure, located at 2715 Lake Rd. E. Ashtabula, Ohio 44004 ("Plant C") and desires to contract for operation, maintenance and management of said facility,

WHEREAS, Operator provides operation, maintenance and management services for Ashtabula County wastewater and potable water systems and has agreed to provide those services for Plant C on the terms and conditions set forth in this Agreement,

WHEREAS, both Owner and Operator wish to supersede and replace an existing Operation and Maintenance Agreement dated April 3, 2020 in their entirety as herein stated;

NOW THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1 - AGREEMENT

Section 1.1 - *Agreement*. This Agreement consists of the terms and conditions set forth in the sections captioned by numbered article designations ("Articles") and the following appendices, which are incorporated and made part this Agreement by this reference and are included in any reference to this Agreement.

Appendix A – Reimbursable Costs

This Agreement contains the entire agreement between the parties and supersedes all prior agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement. Neither party will be bound by or be deemed to have made any representations, warranties, commitments or other undertakings with respect to the subject matter of this Agreement that are not contained in this Agreement. Both parties agree to review the agreement in July 2025 and on an annual basis during the term of this agreement. Any recommended changes must be agreed on by both parties.

Section 1.2 - *Effective Date and Term*. This Agreement shall be effective and shall govern the rights and obligations of the parties as of January 1, 2025 and be in full force and effect until December 31, 2027. Upon mutual consent of both parties, this Agreement may be renegotiated in its final year for execution on January 1, 2028 under separate Agreement.

Section 1.3 - *Relationship of the Parties*. Operator has been retained by Owner as an independent contractor to operate, maintain and manage Plant C on behalf of Owner, in accordance with the EPA NPDES regulations. Owner has delegated to Operator overall responsibility for operating, maintaining and managing Plant C to ensure that Plant C is available for raw water intake and distribution and meets all requirements under

Plant C Agreements. Neither Operator nor any of its employees, subcontractors or agents shall be deemed to have any other status, except that Operator is the agent of Owner to the limited extent that this Agreement expressly grants Operator the authority to act on behalf of Owner.

Section 1.4 - *Representatives*. Owner and Operator shall each designate a representative ("Designated Representative") to act on its behalf in overseeing the performance of this Agreement. Owner and Operator may change their respective Designated Representatives upon written notice to the other party given as provided in this Agreement. Designated Representatives shall be the primary means for communication and all other interactions between Owner and Operator that are required under this Agreement. Designated Representatives shall have the power and authority to bind their respective principals under the terms of this Agreement, with any required internal approvals with respect to such authority being the responsibility of each representative to obtain from his or her principal.

ARTICLE 2 - DEFINITIONS

Section 2.1 - *Definitions*. Unless otherwise required by the context in which a defined term appears, the following terms shall have the meanings specified in this Article 2. Terms that are defined in other Articles shall have the meanings given to them in those Articles.

"Bankruptcy" means a situation in which (i) a party's actions under applicable debtor relief laws demonstrate an inability to pay its debts as they mature or a need for protection from its creditors; (ii) a court of competent jurisdiction approves a petition filed against a party, which petition sought relief for the party's creditors, and the action of the court remains in effect for an aggregated period of 60 days (whether or not consecutive); (iii) a party admits in writing its inability to pay its debts as they mature; (iv) a party gives notice to any person or entity of its current (or pending) insolvency or suspension of operations; or (v) a party makes an assignment for the benefit of creditors or takes other similar action for the protection or benefit of its creditors.

"Business Day" means any day other than a Saturday, Sunday or other day on which government agencies and offices are authorized or required to close in the State of Ohio or by County Resolution, and between the hours of 7:00 am and 4:30 pm.

"Contract Year" means: (i) for the first Contract Year, that period from the date of this Agreement to and including December 31 of such year; and (ii) for each Contract Year thereafter, the calendar year.

"Force Majeure Event" means an event, condition or circumstance beyond the reasonable control of, and not due to the fault or negligence of, the party affected, and which could not have been avoided by due diligence and use of reasonable efforts, which prevents the performance by such affected party of its obligations hereunder; provided, that a "Force Majeure Event" shall not be deemed to have occurred or to be continuing unless the party claiming Force Majeure complies with the requirements of Section 15.3 (*Force Majeure*). Subject to the foregoing, "Force Majeure Event" shall include, as to either party, explosion and fire (in either case to the extent not attributable to the negligence of the affected party), flood, earthquake, storm or other natural calamity or act of God, strike or other labor dispute, war, insurrection or riot, actions or failures to act by governmental entities or officials, failure to obtain governmental permits or approvals (despite timely application therefor and due diligence) and changes in laws, rules, regulations, orders or ordinances affecting operation of Plant C, which events were not pending on the date of this Agreement.

"Lender(s)" means

- (i) any person that has made loans to Owner, its successors or permitted assigns for the financing or refinancing of Plant C (or any part thereof) or which loans are secured by Plant C (or any part thereof),
- (ii) the holder(s) of indebtedness evidencing any such loans or any person or entity lawfully acting on behalf of such holders, or
- (iii) any person or entity that purchases Plant C in connection with a sale-leaseback or other lease arrangement in which Owner is the lessee of Plant C pursuant to a net lease.

"Operating Manuals" means the operating data, design drawings, specifications, vendors' manuals, warranty requirements, procedures (including those for maintenance of Plant C and environmental and safety compliance), and similar materials with respect to Plant C.

"Plant C Agreements" means the agreements relating to Plant C, including any Power Purchase Agreement, Interconnection Agreement, Loan Agreements, this Agreement and all other agreements applicable to Plant C, permits, and licenses required for the operation, maintenance and management of Plant C, as identified in writing by Owner.

"Prudent Utility Practice" means (i) any of the practices, methods, and acts engaged in or approved by a significant portion of the water utility industry in the country and geographic region where Plant C is located during the relevant time period, or (ii) practices, methods and acts that, in the exercise of reasonable judgment on the facts known (or that reasonably should have been known) at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.

"Reimbursable Costs" are those costs set forth in Article 5.

"Services" includes all services set forth in Article 3.

ARTICLE 3 - SERVICES

Section 3.1 – *Scope of Services*. Operator shall provide the following services as indicated herewith.

(1) Baseline Operation and Maintenance Services

- a. Daily site checks, which shall include two walk-throughs of the entire Plant C facility during normal business hours; weekend and holidays as outlined with the County Holiday Schedule will include one walk through, unless additional walk throughs are deemed necessary by the owner or operator; data-logging of critical pumping equipment (as needed), visual inspection of operating equipment (pumps, control panels, and miscellaneous site components), and identification of any operational anomaly and immediate troubleshooting upon detection. Site checks shall also include inspection and log-recording of conditions of certain industrial wastewater effluent within the ACPA property and submission of logs on a monthly basis to the ACPA and additional users as requested by the owner.
- b. Weekly/As-Needed Preventive Mechanical Equipment Maintenance: In accordance with manufacturer's recommendations, Operator shall administer preventive maintenance services which shall include, but are not limited to: lubrication of moving

parts, inspection of belts, hoses, filters, and lights/controls. Operator shall also provide general equipment cleaning, alignment, calibration, tear-down and build-up for inspections, and exercising of valves and rotation of motor service. This shall also include regular exercising of system distribution valves located within ACPA easements offsite. These activities shall be documented and submitted monthly to ACPA electronically.

- c. General Facility Housekeeping, which shall include general interior cleaning of the office area and pump/controls area as needed; removal and disposal of trash, site maintenance (mowing/trimming on a regular basis during the post-winter months, and snow plowing/salting of walkways as needed during the winter months). This service shall also include brush-hogging of ACPA easements where water distribution infrastructure is located offsite.
 - d. Site Access Maintenance: In the post-winter months, the Operator shall maintain the facility's access road and parking area, and regular maintenance of the access way for Plant C.
 - e. NPDES Permit Compliance Services: Operator understands that Plant C operates a retention basin for low-strength wastewater and storm water, which is regulated under NPDES Permit #31B00021; Operator shall perform the requisite sampling and testing as prescribed in the Ohio EPA NPDES permit through Operator's contractual third-party testing laboratory, as well as all reporting as required under the aforementioned permit under this monthly service item. Services relative to coordination of a Risk Management Plan by OEPA Orders date-stamped December 10, 2012 are not inclusive of this Agreement, nor are any consent decree conditions or other matters of compliance or direction by the OEPA prior to December 2016.
 - f. Telemetry Monitoring: Upon completion of ongoing implementation of a SCADA system, Operator can provide continuous remote monitoring and control of certain facilities as needed in the event of an emergency to reduce risk of loss.
 - g. Summary Reporting/Updates: Operator shall provide to the Owner's Designated Representative, on a regular basis, a concise update of O&M services and recommendations for improvements as necessary. The report will be provided to the owner on a quarterly basis.
- (2) Emergency and Non-Planned Repairs shall be defined herein as all emergency/non-planned service work estimated to be \$1,000 or less in total cost and after normal business hours. For emergency/non-planned work estimated to cost more than \$1,000, Operator's Designated Representative shall contact the Owner's Designated Representative for direction relative to how the Owner would like to proceed. Owner retains the right to contract with an independent entity for work estimated over \$1,000, and Operator shall coordinate with the independent party as necessary.
- (3) Non-Emergency and Planned Repairs and Capital Improvements shall be defined herein as all non-emergency/planned service work estimated to be \$500 or less. Non-emergency/planned work in excess of \$500 in estimated costs shall be proposed under

separate cover to Owner for independent authorization on a case-by-case basis. In any event, the work shall be documented with back-up data appended, and invoiced in a professional and organized manner by the Operator.

Section 3.2 - Standards for Performance of the Services. Operator shall perform the Services required under this Agreement, in a prudent, reasonable, and efficient manner and in accordance with (i) any applicable Operating Manuals, Administrative Procedures Manuals and vendor warranties, (ii) all applicable Laws, (iii) Prudent Utility Practices, (iv) Plant C Agreements, (v) the requirements of any System Operator, and (vii) all insurance policies specified in Article 9 of this Agreement. Operator shall use all reasonable efforts to optimize the useful life of Plant C and to minimize Reimbursable Costs and Project outages or other unavailability.

Section 3.3 - Operator's Personnel Standards. Operator shall provide as reasonably necessary all labor and professional, supervisory and managerial personnel as are required to perform the Services. Such personnel shall be qualified to perform the duties to which they are assigned and shall meet any requirements for Project personnel under Plant C Agreements. All individuals employed by Operator to perform the Services shall be employees of Operator, and their working hours, rates of compensation and all other matters relating to their employment shall be determined solely by Operator. With respect to labor matters, hiring personnel, and employment policies, Operator shall comply with all applicable Laws. Operator also shall act in a reasonable manner that is consistent with the intent and purpose of this Agreement and with Operator's acknowledgment (hereby given) that Operator has no authority to enter into any contracts with respect to labor matters that purport to bind or otherwise obligate Owner.

Section 3.4 - Compliance. Operator shall comply with all Laws applicable to the operation, maintenance and management of Plant C and the performance of the Services. Operator shall apply for and obtain, and Owner shall assist Operator in applying for and obtaining, all necessary permits, licenses and approvals (and renewals of the same) required to allow Operator to do business or perform the Services in the jurisdictions where the Services are to be performed. Operator shall provide reasonably necessary assistance to Owner, to secure permits, licenses, and approvals (and renewals of the same) that Owner is required to obtain from or file with any governmental agency regarding Plant C. Operator also shall file such reports, notices, and other communications as may be required by any governmental agency regarding Plant C.

Section 3.5 - Operating Records and Reports. Operator shall maintain, at a location acceptable to Owner, Plant C operating logs, records, and reports that document the operation and maintenance of Plant C, all in form and substance sufficient to meet Owner's reporting requirements under Plant C Agreements. Operator shall maintain current revisions of drawings, specifications, lists, clarifications and other materials related to operation and maintenance of Plant C provided to Operator by Owner and vendors. Operator shall provide Owner reasonably necessary assistance in connection with Owner's compliance with reporting requirements under Plant C Agreements, applicable Laws or any other agreement to which Owner is a party relating to Plant C. Such assistance shall include providing reports, records, logs and other information that Owner may reasonably request as to Plant C or its operation.

Section 3.6 - No Liens or Encumbrances. Operator shall maintain Plant C free and clear of all liens and encumbrances resulting from any action of Operator or work done at the request of Operator, except for such liens or encumbrances that result directly from nonpayment by Owner of amounts due and owing to Operator under this Agreement.

Section 3.7 - No Action. Except where such action is expressly permitted by this Agreement, Operator shall not take any action that would cause a default under any Plant C Agreement.

Section 3.8 - *Emergency Action.* If an emergency endangering the safety or protection of persons, Plant C, or property located near Plant C occurs, Operator shall promptly notify Owner and take all necessary action to attempt to prevent or mitigate any such threatened damage, injury or loss. Operator shall make reasonable efforts to minimize any cost associated with remedial action in case of such an emergency.

Section 3.9 - *Action in Extraordinary Circumstances.* In the event that

(A) Plant C or major equipment suffers an unplanned outage (or Operator reasonably believes that such an occurrence is imminent), and

(B) Operator has made reasonable, but unsuccessful, efforts to notify and communicate with Owner regarding such occurrence or imminent occurrence in accordance with the terms of this Agreement, then Operator shall

(i) take all necessary action to prevent or to mitigate such unplanned outage,

(ii) make reasonable efforts to minimize any cost associated with such remedial action,

(iii) continue to attempt to notify and communicate with Owner regarding the occurrence and the remedial action.

ARTICLE 4 - OWNER RESPONSIBILITIES

Section 4.1 - *Information.* Owner shall provide Operator with all vendor manuals, spare parts lists, Project data books and drawings which are provided to Owner pursuant to any Plant C Agreement or by any contractor responsible for construction, installation, repair or maintenance of Plant C or a part thereof. Subject to the standards of performance set forth in Section 3.2, Operator shall be entitled to rely upon such information in performance of the Services. Owner shall also provide Operator with copies of all Plant C Agreements and any amendments thereto and any other documents that define Plant C's operating requirements.

Section 4.2 - *Overhaul of Major Equipment and Capital Improvements.* The cost of all equipment teardowns and overhauls and all capital improvements shall be the responsibility of Owner. Operator shall promptly notify Owner in writing of any such teardowns and overhauls of equipment or capital improvements that Operator believes are necessary or advisable together with a proposed schedule for completing such repairs or improvements. If Owner has otherwise consented in writing to reimburse Operator for such costs, Operator shall schedule, coordinate, contract and oversee the performance of such activities. Operator also shall be responsible for monitoring and enforcing contract compliance by the contractor performing such work, including taking such steps, short of litigation, to enforce any warranties granted to Owner by such contractor.

ARTICLE 5 - COMPENSATION AND PAYMENT

Section 5.1 - *Payments*. As compensation to Operator for performance of the Services hereunder, Owner shall pay Operator according to the fee schedule below:

<u>Task/Service Item Description</u>	<u>Fee</u>	<u>Billing Frequency</u>
Baseline Operations & Maintenance Services	Fifteen Thousand Dollars per month (\$15,000.00/month)	Monthly
Emergency, Non-Planned Repairs	Included in Baseline cost is for callouts after normal working hours; Materials/Subcontractors invoiced at actual invoice plus five percent (3%) administrative fee. If purchased by County.	Included in Baseline Cost
Non-Emergency/Planned Repairs & Capital Improvements	Materials/Subcontractors invoiced at actual invoice plus three percent (3%) administrative fee. If purchased by County	Monthly

Section 5.2 - *Reimbursable Costs*. Owner shall reimburse Operator for all costs incurred by Operator in performing the Services, including the costs set forth in Appendix A (collectively, the "Reimbursable Costs"). Owner's obligation under this provision is subject to (i) Owner's express approval of the costs separately in writing, or (ii) Operator incurring costs in accordance with Section 3.8 (*Emergency*), 3.9 (*Extraordinary Circumstances*).

Section 5.3 - *Billing and Payment*. Within 30 days following the end of each month, Operator shall submit the receipts and disbursements showing Reimbursable Costs for such month in accordance with Subsection 5.2(a). Within 15 days after receipt of any such invoice, Owner shall:

(a) Pay Operator the sum specified in such invoice, less (i) any amounts previously deposited with Operator relating to such invoice, and (ii) any portion of such invoice amount that Owner disputes in good faith or is permitted to offset under this Agreement; and

(b) With respect to any disputed portion of such invoice, provide Operator with a written statement explaining, in reasonable detail, the basis for such dispute. The parties shall attempt to resolve any such disputed portion in accordance with Article 14.

ARTICLE 6 - PROCEDURES, PLANS AND REPORTING

Section 6.1 - *Operating Data and Records*. Operator shall monitor and record all operating data and information that (i) Owner must report to any person or entity under any Plant C Agreement, (ii) Owner must report to any government agency or other person or entity under applicable Laws and (iii) Owner reasonably requests. Operator shall report required or requested operating data and information to Owner as specified by Owner to support monthly invoicing under Plant C Agreements, and within 15 Business Days following a request by Owner. Operating data to be reported include information from operating logs, meter and gauge readings and maintenance records. All meter readings and flows to be submitted electronically to ACPA monthly in a excel spreadsheet format or other agreed upon format.

Section 6.2 - *Litigation, Permit Lapses*. Upon obtaining knowledge thereof, Operator shall promptly notify Owner in writing of: (i) any event of default under any of Plant C Agreements; (ii) any litigation, claims, disputes or actions, threatened or filed, concerning Plant C or the Services; (iii) any refusal or threatened refusal to grant, renew or extend (or any action pending or threatened that might affect the granting, renewal or extension of) any license, permit, warranty, approval, authorization or consent relating to Plant C or the Services; and (iv) any dispute with any governmental authority relating to Plant C or the Services.

Section 6.3 - *Other Information*. Operator shall promptly submit to Owner any material information concerning new or significant aspects of Plant C's activities and, upon Owner's request, shall promptly submit any other information concerning Plant C or the Services.

ARTICLE 7 - LIMITATIONS ON AUTHORITY

Section 7.1 - *General Limitations*. Notwithstanding any provision in this Agreement to the contrary, unless previously approved by Owner in writing, Operator and any employee, representative, contractor or other agent of Operator are prohibited from taking the specified actions with respect to the matters indicated below.

(a) Disposition of Assets. Sell, lease, pledge, mortgage, convey, or make any license, exchange or other transfer or disposition of any property or assets of Owner;

(b) Lawsuits and Settlements. Settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by, Owner or Operator, the cost of which, in the case of Operator, would be a Reimbursable Cost hereunder, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to do the same;

(c) Liens. Create, incur or assume any lien upon Plant C;

(d) Transactions on Behalf of Others. Engage in any other transaction on behalf of Owner or any other person or entity not expressly authorized by this Agreement or that violates applicable Laws, this Agreement or any Plant C Agreement; or

Section 7.2 - *Execution of Documents*. Any agreement, contract, notice or other document that is expressly permitted hereunder (or under written approval of Owner) to be executed by Operator shall be executed by the authorized representative of Operator or, subject to prior written notice to Owner, by such other representative of Operator who is authorized and empowered by Operator to execute such documents.

ARTICLE 8 - TERMINATION

Section 8.1 - Immediate Termination by Owner. Subject to the terms of any Plant C Agreements, Owner may terminate this Agreement immediately (i) upon the Bankruptcy of Operator or (ii) upon the occurrence of a Force Majeure Event that is not remedied within 90 days of its initial occurrence. If the Agreement is terminated by Owner, Operator shall be paid all unpaid Operating Fees and Reimbursable Costs up to and including the date of termination.

Section 8.2 - Termination upon Notice by Owner. Subject to the terms of any Plant C Agreements, Owner may terminate this Agreement upon 10 days written notice to Operator in the event (i) that Operator violates, or consents to a violation of, any Laws applicable to the Services or Plant C, where the violation has or may have a material adverse effect on the maintenance or operation of Plant C or Owner's interest, and Operator does not cure such violation within 30 days (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided Operator diligently commences such cure), or (ii) of a material breach by Operator in the performance of the Services, if Operator does not cure such breach within 30 days from the date of Operator's receipt of notice from Owner demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided Operator diligently commences and pursues such cure).

Section 8.3 - Other Termination upon Notice by Owner. Subject to the terms of any Plant C Agreements, Owner may terminate this Agreement with 60 days prior written notice to Operator, upon the occurrence of (i) a sale or transfer by Owner of its rights in Plant C or a sale or transfer of all or substantially all of the assets of or interests in Owner, (ii) a determination by Owner that, for any reason, it no longer intends to continue operation of Plant C or (iii) a determination by Owner that it does not wish to extend this agreement at the expiration of any relevant term. If the Agreement is terminated by Owner pursuant to this section, Operator shall be compensated for all unpaid Annual Operating Fees and Reimbursable Costs up to and including the date of such termination.

Section 8.4 - Termination by Operator. Subject to the terms of any Plant C Agreements, Operator may terminate this Agreement for cause upon 15 days prior written notice to Owner in the event of: (i) Owner's Bankruptcy; or (ii) Owner's failure to perform in a timely manner any of its material obligations under this Agreement and such failure is not cured within 30 days of Owner's receipt of a notice from Operator demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided that Owner diligently commences and continues to pursue such cure).

Section 8.5 - Plant C Condition at Commencement of Term. The parties hereby make note and accept as true the conditions of Plant C listed in Appendix existing on the effective date of this initial term of this Agreement.

Section 8.6 - Plant C Condition at End of Term. Upon expiration or termination of this Agreement, Operator shall remove its personnel from Plant C. Operator shall leave Plant C in as good condition as it was on the Effective Date, normal wear and tear and casualty excepted. Operator shall be paid all unpaid Reimbursable Costs. All special tools, improvements, inventory of supplies, spare parts, safety equipment, Operating Manuals and Procedures Manuals, operating logs, records and documents maintained by Operator pursuant to Section 3.5 and any other items furnished on a Reimbursable Cost basis under this Agreement will be left at the Project and will become or remain the property of Owner without additional charge. Owner shall also have the right, in its sole discretion, to assume and become liable for any contracts or obligations that Operator may have undertaken with third parties in connection with the Services. Operator shall cooperate in taking all reasonable

steps requested by Owner required to affect the assumption of the contracts. Operator shall use commercially reasonable efforts to cooperate with Owner or a succeeding operator to assure that the operation, maintenance and management of Plant C are not disrupted.

ARTICLE 9 - INSURANCE

Section 9.1 - Coverage.

(a) Obligation to Obtain. Owner and Operator shall obtain and maintain the insurance set forth in Sections 9.1(b) and 9.1(c).

(b) Operator Coverage. Operator shall maintain during the term of this Agreement the insurance described below with insurance companies acceptable to Owner and with limits and coverage provisions not less than the limits and coverage provisions set forth below:

(i) General Liability Insurance: Liability insurance on the basis of claims made for personal injury (including bodily injury and death) and property damage.

(ii) Automobile Liability Insurance: Automobile liability insurance against claims for personal injury (including bodily injury and death) or property damage arising out of the use of all owned, leased, non-owned and hired motor vehicles, including loading and unloading, and containing appropriate no-fault insurance provisions where applicable.

(iii) Workers' Compensation Insurance: Workers' compensation insurance as required by applicable laws, including employer's liability insurance for all employees of Operator.

(iv) Excess Liability Insurance: Excess liability insurance on the basis of claims made covering claims in excess of the underlying insurance described in the foregoing subsections (i), (ii) and (iii).

The amounts of insurance required in the foregoing subsections (i), (ii), (iii) and (iv) may be satisfied by Operator purchasing coverage in the amounts specified or by any combination thereof, so long as the total amount of insurance meets the requirements specified. Upon mutual agreement of the Owner, Operator may provide equivalent self-insurance in lieu of the requirements set forth in this Section.

(v) All policies of liability insurance to be maintained by Operator shall provide for waivers of subrogation in favor of Owner, the Lenders and such other persons as may be required by Plant C Agreements. These policies shall include the following:

(A) a severability of interests or cross liability clause;

(B) insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Owner or the Lenders; and

(C) Owner, Lenders and such other persons or entities as may be required by Owner's Agreements named as additional insureds.

All policies of insurance required to be maintained pursuant to Section 9.1 shall include a provision that bars any cancellation or reduction in coverage in a manner that affects the interests of Owner, without 30 days prior

written notice to Owner, except for termination for non-payment of premium which shall require 10 days prior written notice to Owner. Owner has the option in placing the coverages listed above and naming the Operator as an additional insured.

(c) *Owner Coverage.* Owner shall maintain from and after the date of this Agreement the insurance described below and with limits and coverage provisions not less than the limits and coverage provisions set forth below:

(i) *Liability Insurance:* Liability insurance on the basis of claims made for personal injury (including bodily injury and death) and property damage. Owner may provide adequate self-insurance in lieu of the requirements set forth in this Section.

(d) *Cost.* All costs incurred by Operator with respect to payment of any deductible relating to the insurance coverage set forth in this agreement shall be deemed Reimbursable Costs.

Section 9.2 - *Certificates.* On or before the date on which insurance must be provided, each party shall furnish certificates of insurance to the other party evidencing the insurance required pursuant to this Agreement. Each party shall cooperate with the other to ensure collection from insurers for any loss under any such policy.

Section 9.3 - *Payment of Deductible Amounts.* Notwithstanding which party hereto shall have purchased, or been responsible for the purchase of, any insurance in respect of Plant C or otherwise referred to in this Agreement, Operator shall promptly pay to Owner any deductible amount related to any claim against or other cost to Owner covered under any such insurance policy which arose due to the gross negligence of Operator.

ARTICLE 10 - LIABILITIES

Section 10.1 - *Environmental Liability.*

(a) Owner Liability. Owner shall not be responsible for claims directly related to hazardous materials at Plant C arising out of the grossly negligent or intentional acts of Operator. This provision of the Agreement shall not be construed to require Operator to take corrective action with respect to any hazardous materials at Plant C before the date of this Agreement.

(b) Governmental Actions. If action is required at Plant C to comply with any applicable environmental laws during the term of this Agreement, Owner (with Operator's assistance) shall be responsible for the costs of compliance. Costs for such compliance action shall only be incurred by Operator only with Owner's prior written consent, unless a governmental authority requires Operator to incur such costs and expenses prior to obtaining such written consent.

ARTICLE 11 - LIMITATIONS OF LIABILITY

Section 11.1 – *Limitations of Liability.*

(a) Personal Liability Limited. Operator and Owner each understand and agree that there shall be absolutely no personal liability on the part of any of the members, partners, officers, employees, directors, agents, authorized representatives or Affiliates of Owner or Operator for the payment of any amounts due hereunder, or performance of any obligations hereunder.

(b) Survival. The parties further agree that the waivers and disclaimers of liability, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply at all times (unless otherwise expressly indicated), regardless of fault, negligence, strict liability, or breach of warranty of the party indemnified, released or whose liabilities are limited, and shall extend to the members, partners, principals, officers, employees, controlling persons, executives, directors, agents, authorized representatives, and affiliates of such party.

(c) Exclusivity. The provisions of this Agreement constitute Operator's and Owner's exclusive liability, respectively, to each other, and Operator's and Owner's exclusive remedy, respectively, with respect to the Services to be performed hereunder and Owner hereby releases Operator performing Services hereunder, and Operator hereby releases Owner performing its obligations hereunder, from any further liability.

ARTICLE 12 - TITLE, DOCUMENTS AND DATA

Section 12.1 - *Materials and Equipment.* Title to all materials, equipment, tools, supplies, consumables, spare parts and other items purchased or obtained by Operator on a Reimbursable Cost basis hereunder shall pass immediately to and vest in Owner upon the passage of title from the vendor or supplier thereof, provided, however, that such transfer of title shall in no way affect Operator's obligations as set forth in this Agreement.

Section 12.2 - *Documents.* All materials and documents prepared or developed by Operator, its employees, representatives or contractors in connection with Plant C or performance of the Services, including all manuals, data, drawings, plans, specifications, reports and accounts, shall become Owner's property when prepared, and Operator, its agents, employees, representatives, or contractors shall not use such materials and documents for any purpose other than performance of the Services, without Owner's prior written approval. All such materials and documents, together with any materials and documents furnished to Operator, its agents, employees, representatives, or contractors by Owner, shall be delivered to Owner upon expiration or termination of this Agreement and before final payment is made to Operator.

Section 12.3 - *Review by Owner.* All materials and documents referred to in Section 13.2 hereof shall be available for review by Owner or Lenders (including their agents or advisors) at all reasonable times during development and promptly upon completion. Owner's approval of materials and documents submitted by Operator shall not relieve Operator of its responsibility for the correctness thereof or of its obligation to meet all requirements of this Agreement.

Section 12.4 - *Proprietary Information.* Where materials or documents prepared or developed by Operator or its agents, employees, representatives or contractors contain proprietary information, systems, techniques, or know-how acquired from third parties by Operator or others acting on its behalf, such persons or entities shall retain all rights to use or dispose of such information, provided, however, that Owner shall have the right to the same to the extent necessary for operation or maintenance of Plant C.

ARTICLE 13 - RESOLUTION OF DISPUTES

Section 13.1 - *Resolution through Discussions.* If any dispute or difference of any kind (a "Dispute") arises between Owner and Operator in connection with, or arising out of, this Agreement, the Owner and Operator within 30 days shall attempt to settle such Dispute in the first instance through discussions. The designated representatives of Owner and Operator shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of such Dispute. If the representatives are unable to resolve the Dispute within 5 Business Days, the Dispute shall be referred within 2 Business Days of the lapse of the 5 Business Day period to the responsible senior management of each party for resolution. Neither party shall seek any other means of resolving any Dispute arising in connection with this Agreement until the responsible senior management of Owner and Operator have had at least 5 Business Days to resolve the Dispute following referral of the Dispute to them. If the parties are unable to resolve the Dispute using the procedure described in this section, either party may deliver notice to the other party of its intent to submit the Dispute to mediation ("Mediation Notice"). The Mediation Notice shall include the specific issues concerning the Dispute which must be resolved by the mediation.

Section 13.2 - *Mediation.* Any Dispute arising out of, or in connection with, this Agreement and not settled by discussions shall (regardless of the nature of the Dispute) be finally settled in confidential mediation.

Section 13.3 - *Continued Performance.* During the pendency of any mediation, Operator and Owner shall continue to perform their obligations under this Agreement.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.1 - *Assignment.* Neither Owner nor Operator party may assign its rights or obligations under this Agreement without the prior written consent of the other party hereto, except that this Agreement may be assigned by Owner without such prior consent to any successor of Owner, to a person or entity acquiring all or substantially all of Plant C, or to a Lender or any purchaser of Plant C upon the exercise of remedies under a Plant C Agreement by a Lender. Operator hereby consents to the assignment by Owner of a security interest in this Agreement to Lenders. Operator further agrees to execute documentation to evidence such consent reasonably required by the Lenders typical for project finance. Operator recognizes that such consent may grant certain rights to such Lenders, which shall be fully described in the consent documents.

Section 14.2 - *Access to Project.*

(a) Owner. Owner, Lenders and their respective agents and representatives shall have access at all times to Plant C and any documents, materials and records and accounts relating to Project operations for purposes of inspection and review. Upon the request of Owner, Lender or their respective agents and representatives, Operator shall make available to such persons or entities and provide them with access to any operating data and all operating logs.

(b) Cooperation. During any such inspection or review of Plant C, each of Owner, Lender and their respective agents and representatives shall use its reasonable commercial efforts to cause authorized visitors to comply with Operator's safety and security procedures and to conduct such inspection and review in a manner which causes minimal interference with Operator's activities. Operator agrees to cooperate fully with Owner, Lender and their respective agents and representatives in providing requested information and documentation for the support of any financial or legal transactions associated with Plant C.

Section 14.3 - *Force Majeure.* If either Owner or Operator is rendered wholly or partially unable to perform its obligations under this Agreement (other than payment obligations) due to a Force Majeure Event, the party affected by such Force Majeure Event shall be excused from whatever performance is impaired by such Force Majeure Event, provided that the affected party promptly, upon learning of such Force Majeure Event and ascertaining that it will affect its performance hereunder, (i) promptly gives notice to the other party stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimize its effect and (ii) uses its reasonable commercial efforts to remedy its inability to perform.. The suspension of performance shall be of no greater scope and no longer duration than that which is necessary. No obligations of either party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence. The burden of proof shall be on the party asserting excuse from performance due to a Force Majeure Event.

Section 14.4 - *Amendments.* No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both parties.

Section 14.5 - *Survival.* Notwithstanding any provisions herein to the contrary, the obligations and limitations of liabilities set forth herein, shall survive in full force despite the expiration or termination of this Agreement.

Section 14.6 - *No Waiver.* It is understood and agreed that any delay, waiver or omission by Owner or Operator with respect to enforcement of required performance by the other under this Agreement shall not be construed to be a waiver by Owner or Operator of any subsequent breach or default of the same or other required performance on the part of Owner or Operator.

Section 14.7 - *Notices.* All notices and other communications (collectively "Notices") required or permitted under this Agreement shall be in writing and shall be given to each party at its address or email set forth in this Section 15.8 or at such other address or email as hereafter specified as provided in this Section 15.8. All Notices shall be (i) delivered personally or (ii) sent by email, telegraph, registered or certified mail (return receipt requested and postage prepaid), or (iii) sent by a nationally recognized overnight courier service. Notices shall be deemed to given (A) when transmitted if sent by email, or telegraph (provided the transmittal is confirmed), or (B) upon receipt by the intended recipient if given by any other means. Notices shall be sent to the following addresses:

To Operator:

Ashtabula County Department of Environmental Services (ACDES)
P.O. Box 520, 36 West Walnut Street, Jefferson, OH 44047
ATTN: Doug Starkey, Director
Tel: (440) 576-3722
Email dgstarkey@ashtabulacounty.us

To Owner:

Ashtabula County Port Authority (ACPA)
35 West Jefferson Street, Jefferson, OH 44047
ATTN: Mr. Mark A. Winchell, Executive Director
Tel: (440) 576-6069

E-Mail: mawinchell@ashtabulacounty.us

Section 14.8 - Fines and Penalties. If during the term of this Agreement any governmental or regulatory authority or agency assesses any fines or penalties against Operator or Owner arising from Operator's failure to operate and maintain Plant C in accordance with applicable Laws without Owner's prior written consent, such fines and penalties shall, subject to the limitations set forth in Article 11, be the sole responsibility of the Owner.

Section 14.9 - Representations and Warranties. Each party represents and warrants to the other party that:

(a) such party has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby;

(b) to the best of such party's knowledge, the execution, delivery and performance by such party of this Agreement, does not and will not materially conflict with any legal, contractual, or organizational requirement of such party; and

(c) there are no pending or threatened legal, administrative, or other proceedings that if adversely determined, could reasonably be expected to have a material adverse effect on such party's ability to perform its obligations under this Agreement.

Section 14.10 - Counterparts. The parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both parties constitute one instrument. Thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it.

Section 14.11 - Governing Law. This Agreement is executed and intended to be performed in the State of Ohio and the laws of the State of Ohio shall govern its construction, interpretation and effect.

Section 14.12 - Partial Invalidity. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and in no way be affected, impaired or invalidated.

Section 14.13 - Captions. Titles or captions of Sections contained in this Agreement are inserted as a matter of convenience and for reference, and do not affect the scope or meaning of this Agreement or the intent of any provision hereof.

Section 14.14 - Dollar Amounts. All amounts of money in this Agreement are denominated in U.S. currency.

Section 14.15 - Vendor's Warranties. For Owner's benefit, Operator shall obtain from sellers of equipment, material, or third-party services, warranties against defects in materials and workmanship to the extent such warranties are reasonably obtainable, and, to the extent of any such warranties actually obtained, Owner releases Operator from any further liability arising in respect of such equipment, material or services (other than the Services) to the extent such liability is covered by any such warranty. Operator itself shall not be liable for any such warranties, or for any defects or damage caused by such equipment, material or services (other than the Services). Upon Owner's request, Operator agrees to take such steps as are necessary, short of litigation, to enforce said warranties. Each such warranty shall be enforceable by Owner for Owner's benefit or assignable by Operator to Owner without any further action or consent by or on the part of any third party. Unless otherwise requested, Operator shall administer such warranties and immediately notify Owner of any defects discovered or suspected that may be covered by such warranties. When requested, Operator shall assign any such warranty to Owner and assist Owner with the administration and enforcement of such warranty, or, if such warranty is not assignable to Owner, assist Owner with the administration and enforcement of such warranty.

[SIGNATURES ON NEXT PAGE]

Appendix A - REIMBURSABLE COSTS

Reimbursable Cost items shall be paid to Operator in accordance with the requirements of this Agreement.

Reimbursable Costs include:

1. Labor costs, including allowances for payroll, taxes, bonuses and benefits
2. Spare and replacement parts
3. All material, tools and equipment necessary to operate and maintain the Project
4. Chemicals
5. Lubricants (including proper disposal costs)
6. Specialized instrumentation and calibration equipment
7. Rigging and handling equipment
8. Consumables and general supplies
9. Cleaning Supplies
10. Shop equipment installed in Project
11. Authorized leased equipment
12. Specialized test and calibration equipment
13. Major equipment overhauls
14. Building repairs and maintenance (not caused by contractors under the Project Agreements)
15. Insurance costs
17. Taxes (excluding income) required to be paid by Operator
18. Costs related to training of plant personnel
19. Consultants' fees and expenses if approved (in advance) by Owner.
19. Contract Services, if approved (in advance) by Owner.

The following will be Reimbursable Costs when specifically related to Plant C support:

1. Office supplies
2. Office equipment and furniture
3. Telephone and other communication service charges
4. Freight and express mail charges
5. Janitorial, cleaning, and groundskeeping services

All Services by Operator that support Plant C activities and all Reimbursable Costs shall be approved by Owner, prior to implementation by Operator.

Signature Page

AGREEMENT TITLE: Operational Support Agreement

APPROVED as to Legal Form Only.

Approved by: _____



April R. Grabman
Ashtabula County Prosecutor

Dated: 4/21/2025

Reviewed by Earl F. Stoll, Assistant Prosecutor

