

**EMERGENCY**

**City of Cincinnati**

**An Ordinance No. \_\_\_\_\_**

- 2024

JESW

**PLEDGING** a portion of the City's transient occupancy tax (the "City TOT") to secure obligations of the Port of Greater Cincinnati Development Authority (the "Port Authority") to be issued to refinance existing obligations and to finance the costs to renovate, expand, improve, and develop the City-owned Duke Energy Convention Center and related properties; **ESTABLISHING** the priority of the City's pledge of the City TOT relative to other authorized pledges and uses of the City TOT; and **AUTHORIZING** the City Manager to enter into and execute a Cooperative Agreement with Hamilton County, Ohio (the "County"), the Port Authority, and, for limited purposes, the Convention Facilities Authority for Hamilton County, Ohio (the "CFA"), and the Greater Cincinnati Convention and Visitors Bureau, Inc. (the "GCCVB"); and a Residual TOT Fund Cooperative Agreement with the County, and, for limited purposes, the CFA and the GCCVB; and authorizing and approving related matters.

WHEREAS, the City of Cincinnati (the "City") owns the Duke Energy Convention Center (the "DECC") located at 525 Elm Street, on real property generally bounded by Elm Street, Fifth Street, Sixth Street, and Central Avenue in the Central Business District of Cincinnati; and

WHEREAS, despite regular maintenance and repairs, and necessary periodic capital improvements, the DECC has deteriorated and requires substantial renovation and capital improvements; and

WHEREAS, the City, the County of Hamilton, Ohio (the "County"), the Port of Greater Cincinnati Development Authority (the "Port Authority"), the Convention Facilities Authority for Hamilton County, Ohio (the "CFA"), the Greater Cincinnati Convention and Visitors Bureau, Inc. (the "GCCVB"), and Cincinnati Center City Development Corporation ("3CDC") have determined to cooperatively advance the renovation, expansion, improvement, and development of the DECC and related properties in the Central Business District (altogether the "DECC Project"); and

WHEREAS, the City, the County, and the CFA are parties to a Cooperative Agreement, effective January 14, 2004, (as amended, and supplemented by a total of ten supplements, the "2004 Original Cooperative Agreement"), pursuant to and in accordance with which the CFA issued its \$69,890,000 Revenue Refunding and Improvement Bonds, Series 2014 (the "2014 CFA Bonds"), and the Port Authority issued its \$53,265,000 Refunding Revenue Bonds, Series 2023 (Convention Center Hotel Acquisition and Demolition Project) (the "2023 Millennium Bonds"); and

WHEREAS, the City anticipates the Port Authority's issuance of bonds in a maximum principal amount of three hundred seventy million dollars (\$370,000,000) (the "TOT Bonds") to refinance the 2014 CFA Bonds and the 2023 Millennium Bonds, and to finance a portion of the costs of the DECC Project; and

WHEREAS, pursuant to Section 5739.08(A) of the Ohio Revised Code (“R.C.”) and Ordinance No. 89-1969, as amended, supplemented, renewed, or restated, the City has levied an excise tax of one and one-half percent (1.50%) on transactions by which lodging by a hotel is or is to be furnished to transient guests within Cincinnati (including the revenues therefrom, the “City 1969 1.50% TOT”); and

WHEREAS, pursuant to R.C. Section 5739.08(A) and Ordinance No. 41-2002, as amended, supplemented, renewed, or restated, the City has levied an excise tax of one and one-half percent (1.50%) on transactions by which lodging by a hotel is or is to be furnished to transient guests within Cincinnati (including the revenues therefrom, the “City 2002 1.50% TOT”); and

WHEREAS, pursuant to R.C. Section 5739.09(B)(2) and Ordinance No. 311-2002, as amended, supplemented, renewed, or restated, the City has levied an excise tax of one percent (1.00%) on transactions by which lodging by a hotel is or is to be furnished to transient guests within Cincinnati (including the revenues therefrom, the “City 2002 1.00% TOT”); and

WHEREAS, the City has previously committed the City 1969 1.50% TOT toward the costs to operate and maintain the DECC (the “DECC O&M Costs”), and the City has determined it is in its best interest to continue to apply the City 1969 1.50% TOT toward payment of the DECC O&M Costs in accordance with a Cooperative Agreement (the “Cooperative Agreement”) by and among the City, the County, the Port Authority, and, for limited purposes, the CFA, and the GCCVB, which Cooperative Agreement will amend and restate in its entirety the 2004 Original Cooperative Agreement; and

WHEREAS, the City previously pledged the City 2002 1.50% TOT toward the payment of the Port Authority’s \$18,445,000 Tax-Exempt Development Revenue Bonds, Series 2021 (FC Cincinnati Public Improvements Project TOT Bonds) (the “FCC TOT Bonds”) pursuant to the Cooperative Agreement dated as of March 1, 2021, by and among the Port Authority, the City, West End Ventures LLC, and Fussball Club Cincinnati, LLC, and acknowledged by The Huntington National Bank, as Trustee (the “FCC TOT Bonds Cooperative Agreement”); and

WHEREAS, pursuant to the Cooperative Agreement, the City will pledge the City 2002 1.50% TOT to secure repayment of the TOT Bonds on a subordinate basis relative to the City’s pledge of the City 2002 1.50% TOT toward the repayment of the FCC TOT Bonds, as required by the terms of the FCC TOT Bonds Cooperative Agreement; and

WHEREAS, the City has determined to pledge the City 2002 1.00% TOT to secure repayment of the TOT Bonds on a senior basis; and

WHEREAS, the City has determined to further secure repayment of the TOT Bonds through a monetary contribution from the City in an amount not to exceed \$650,000 annually, subject to the annual appropriation of such amount by the City for such purpose; and

WHEREAS, the City has determined that it is in its best interest to apply the portion of the City 2002 1.50% TOT and the City 2002 1.00% TOT that are (a) pledged toward to the repayment of the TOT Bonds, but (b) not used to pay debt service and related costs of the TOT Bonds (the “City Residual TOT”), to fund the purposes and efforts of the GCCVB and to be available to pay

a portion of the costs of necessary future capital improvements to the DECC and related properties;  
and

WHEREAS, the City has determined to enter into a Residual TOT Fund Cooperative Agreement with the County, and, for limited purposes, the CFA and the GCCVB (the “Residual TOT Agreement”), to document the required application of the City Residual TOT and the portion of the County transient occupancy tax that is (a) pledged toward repayment of the TOT Bonds, but (b) not used to pay debt service and related costs of the TOT Bonds; and

WHEREAS, the City considers the DECC Project to be in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements, and for this reason the City desires to facilitate the DECC Project by applying the City 1969 1.50% TOT towards the DECC O&M Costs, pledging the City 2002 1.50% TOT and the City 2002 1.00% TOT toward repayment of the TOT Bonds pursuant to the Cooperative Agreement, and applying the City Residual TOT pursuant to and in accordance with the Residual TOT Agreement; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. Definitions. That when used in this ordinance, the following words shall have the indicated meanings:

“2014 CFA Bonds” means the CFA’s \$69,890,000 Revenue Refunding and Improvement Bonds, Series 2014, dated December 4, 2014.

“2023 Millennium Bonds” means the Port Authority’s \$53,265,000 Refunding Revenue Bonds, Series 2023 (Convention Center Hotel Acquisition and Demolition Project), dated April 27, 2023.

“City” means the City of Cincinnati, Ohio, a municipal corporation and political subdivision of the State, duly organized and validly existing under the laws of the State.

“City 1969 1.50% TOT” means the excise tax of one and one-half percent (1.50%) on transactions by which lodging by a hotel is or is to be furnished to transient guests within Cincinnati, levied by the City pursuant to Section 5739.08(A) of the Ohio Revised Code (“R.C.”) and Ordinance No. 89-1969 of the City enacted on March 5, 1969, as amended, supplemented, renewed, or restated from time to time, including the revenues therefrom.

“City 2002 1.50% TOT” means the excise tax of one and one-half percent (1.50%) on transactions by which lodging by a hotel is or is to be furnished to transient guests within Cincinnati, levied by the City pursuant to R.C. Section 5739.08(A) and Ordinance No. 41-2002 of the City enacted on February 13, 2002, as amended, supplemented, renewed, or restated from time to time, including the revenues therefrom.

“City 2002 1.00% TOT” means the excise tax of one percent (1.00%) on transactions by which lodging by a hotel is or is to be furnished to transient guests within Cincinnati, levied by the City pursuant to R.C. Section 5739.09(B)(2) (now R.C. Section 5739.08(C)) and Ordinance No. 311-2002 of the City enacted on September 30, 2002, as amended, supplemented, renewed, or restated from time to time, including the revenues therefrom.

“City Residual TOT” means, during a given calendar year, the portion of the City 2002 1.50% TOT and the City 2002 1.00% TOT that are pledged toward the repayment of the TOT Bonds, but are not used to pay debt service or related costs of the TOT Bonds in such calendar year.

“Cooperative Agreement” means an Amended and Restated Cooperative Agreement among the County, the City, the Port Authority, and the Trustee, and, for certain limited purposes, the CFA and the GCCVB.

“CFA” means the Convention Facilities Authority for Hamilton County, Ohio, a body corporate and politic, duly organized and validly existing under the laws of the State.

“County” means the County of Hamilton, Ohio, a county and political subdivision of the State, duly organized and validly existing under the laws of the State.

“DECC” means the Duke Energy Convention Center, currently owned by the City and located at 525 Elm Street, and located on real property generally bounded by Elm Street, Fifth Street, Sixth Street, and Central Avenue in the Central Business District of the City.

“DECC Project” means the renovation, expansion, improvement, and development of the DECC and related properties in the Central Business District.

“FCC TOT Bonds” means the Port Authority’s \$18,445,000 Tax-Exempt Development Revenue Bonds, Series 2021 (FC Cincinnati Public Improvements Project TOT Bonds).

“GCCVB” means the Greater Cincinnati Convention and Visitors Bureau, Inc., a not-for-profit corporation, duly organized and existing under the laws of the State.

“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 a Residual TOT Fund Cooperative Agreement between the City and the County, and for certain limited purposes, the CFA and the GCCVB.

“State” means the state of Ohio.

“TOT Bonds” means bonds to be issued by the Port Authority in a principal amount not to exceed three hundred seventy million dollars (\$370,000,000), the proceeds of which shall be used to pay debt service of and redeem all of the outstanding 2014 CFA Bonds and all of the outstanding 2023 Millennium Bonds and to pay a portion of the costs to renovate, expand, improve, and develop the DECC and related properties.

“Trustee” means a trust company or bank (having trust powers) in good standing, within or outside the State, approved by the City, the County, and the Port Authority, willing, qualified and able to accept the trust upon reasonable and customary terms.

Section 2. Cooperative Agreement. That the City Manager is hereby authorized to execute the Cooperative Agreement, pursuant to which Cooperative Agreement, the City shall (a) apply the City 1969 1.50% TOT towards the payment of costs to operate and maintain the DECC, (b)

pledge the City 2002 1.50% TOT toward repayment of the TOT Bonds, which pledge shall be subordinate to the City's pledge of the City 2002 1.50% TOT towards repayment of any outstanding FCC TOT Bonds; (c) pledge on a senior basis the City 2002 1.00% TOT toward repayment of the TOT Bonds; and (d) further secure repayment of the TOT Bonds through a monetary contribution from the City in an amount not to exceed \$650,000 annually, subject to the annual appropriation of such amounts by the City for such purpose.

Section 3. Residual TOT Agreement. That the City Manager is hereby authorized to execute the Residual TOT Agreement, pursuant to which the City Residual TOT shall be applied to fund the purposes and efforts of the GCCVB and to make available funding to pay a portion of the costs of necessary future capital improvements to the DECC and related properties, which costs, among other costs, shall be paid in part with transient occupancy taxes of the County pledged toward the repayment of the TOT Bonds but not used to pay debt service and related costs of the TOT Bonds in a given calendar year.

Section 4. That the appropriate City officials are hereby authorized to do all things necessary and proper to carry out the provisions of Sections 2 and 3 of this ordinance, including, without limitation, entering into the Cooperative Agreement, entering into the Residual TOT Agreement and any other agreements, amendments, and other instruments pertaining to the TOT Bonds and the DECC Project.

Section 5. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to enable the City to execute the Cooperative Agreement and the Residual TOT Agreement at the