

EMERGENCY

City of Cincinnati

JRS

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An Ordinance No. 247

- 2020

**AUTHORIZING** the City Manager to execute an Amendment to the 1973 City-SORTA Agreement for the transfer of funds from the Income Tax Transit Fund 759 and the transfer of real property to the Southwest Ohio Regional Transit Authority (“SORTA”) on the condition of maintaining agreed upon minimum required service levels in the City of Cincinnati; **AUTHORIZING** the City Manager to perform an initial reconciliation of the Income Tax Transit Fund 759 upon expiration of the Transit Income Tax in October 2020 and to take steps to transfer the available portion of the unappropriated surplus of Income Tax Transit Fund 759 to SORTA in 2020, with future Transit Income Tax revenue to be transferred to SORTA upon final reconciliation of Fund 759 after final disposition of Transit Tax revenues and liabilities.

WHEREAS, the City and the Southwest Ohio Regional Transit Authority (“SORTA”) entered into the 1973 City-SORTA Agreement, effective February 8, 1973 (as amended from time to time, the “1973 Agreement”), by which SORTA agreed to operate the City-owned bus system as part of a regional transit authority formed under Ohio Revised Code Chapter 306; and

WHEREAS, as contemplated in the 1973 Agreement, the City levied a 0.3% City income tax devoted to public transit and transportation purposes (the “Transit Income Tax”), which has served as SORTA’s principal source of funding since 1973; and

WHEREAS, in the spring of 2020, the voters of Hamilton County approved SORTA’s sales and use tax levy (Issue 7) (the “Levy”), creating a new source of dedicated funding for SORTA and local transportation infrastructure that becomes effective on October 1, 2020 (the “SORTA Sales Tax”); and

WHEREAS, City voters authorized amendment of Article VIII, Section 6c of the Charter to repeal the Transit Income Tax effective upon October 2, 2020, being the first day after the start of collection of the SORTA Sales Tax; and

WHEREAS, the City has an interest in certain rolling stock used by SORTA in its Metro bus operations under the 1973 Agreement; and

WHEREAS, the City owns the following real property which is currently used by SORTA for Metro operations: the Queensgate Garage property located at 1401 Bank Street and the Bond Hill Garage property located at 4700 Paddock Road (together, the “Real Property”); and

WHEREAS, Article C, Paragraph 12, of the 1973 Agreement provided that the City would convey to SORTA all assets operated by SORTA for the City at such time as a political subdivision other than the City, and excluding the Federal or State governments, is providing operating subsidies equal in total in amount to that provided by the City, but did not provide the terms of such transfer; and

WHEREAS, the City Manager, being the officer having the custody and control of the Real Property, and upon consultation with DCED, has determined that the Real Property is not needed for any municipal purpose; and

WHEREAS, pursuant to Section 331-5 of the Cincinnati Municipal Code, Council may authorize the sale of City-owned property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

WHEREAS, the City is currently the primary jurisdiction served by the Metro bus system (“Metro”) in the sense that almost all current routes run into, out of, or completely within the City limits, and that Metro routes and ridership are heavily concentrated in the City; and

WHEREAS, in consideration for the transfer of the Real Property, SORTA agrees to maintain bus service levels in the City at the current 2020 pre-COVID19 pandemic levels, (“Minimum Service Levels”), which are vital to the City’s citizens and necessary to ensure transportation is available to persons living and working in the City; and

WHEREAS, by written amendment to the 1973 Agreement, the City and SORTA will provide for the transfer of the unappropriated surplus in the Transit Income Tax from the City to SORTA, the transfer of the Real Property and other assets to SORTA, and that SORTA will continue to provide Minimum Service Levels in the City; and

WHEREAS, the City anticipates transferring the surplus Transit Income Tax in at least two phases: Phase 1 to occur in October 2020 upon cessation of the collection of the Transit Income Tax; Phase 2 to occur upon final collection of 2020 tax returns and resolution of existing obligations to be paid from Fund 759; and

WHEREAS, SORTA agrees to hold a portion of the funds transferred to it from the unappropriated surplus of Income Tax Transit Fund 759 in escrow as an income tax contingency reserve fund until such time as the City determines the funds are no longer necessary to ensure compliance and pay any claims concerning the collection of the Transit Income Tax; and

WHEREAS, the City and SORTA recognize a need for preservation of urban bus routes in the City used by the citizens who are most dependent on Metro as their primary transportation provider, and many such routes currently serve the more economically disadvantaged neighborhoods in the City; and

WHEREAS, the transfer of funds, Real Property, and other assets, authorized in this ordinance, shall not occur until the amendment has been executed by the City and SORTA, whereby SORTA agrees to the Minimum Service Levels; and

WHEREAS, a copy of the Amendment to the 1973 Agreement authorized by this Ordinance is attached to this ordinance as Attachment A, and the final version of the Amendment shall be in substantially the same form; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute the Amendment to the 1973 City-SORTA Agreement (“Amendment”) with the Southwest Ohio Regional Transit Authority (“SORTA”), in substantially the form attached to this ordinance as Attachment A, pursuant to which the City of Cincinnati agrees to: (i) an initial transfer to SORTA in 2020 of least \$1,500,000 from the unappropriated surplus of Income Tax Transit Fund 759; (ii) a future transfer to SORTA upon final reconciliation of the Fund 759, which will occur after City collection of 2020 transit fund revenue and disposition of associated fund obligations; (iii) conveyance of title in the Real Property (defined below in Section 2) and other assets to SORTA for use in operating the bus system; and (iv) SORTA use of an agreed upon portion of the Fund 759 transfer(s) as an income tax contingency reserve to reimburse the City as needed for Income Tax Transit Fund 759 refunds/liability. Under the Amendment, SORTA agrees to maintain existing levels of bus service (pre-COVID19) in the City for the duration of the SORTA levy and successor county-wide levies.

Section 2. That the transfer of real estate located at 1401 Bank Street and the Bond Hill Garage property located at 4700 Paddock Road (together, the “Real Property”) and any miscellaneous assets, is hereby authorized for the purpose of complying with the 1973 City-SORTA Agreement, Article C, Paragraph 12 and in consideration of SORTA’s promise to continue to provide current levels of bus service in the City.

Section 3. That the Real Property is not needed for any municipal purpose and its conveyance to SORTA was contemplated as part of the 1973 Agreement.

Section 4. That the transfer of the City’s Real Property to SORTA for operation as part of the regional transit authority is in direct exchange for SORTA’s agreeing to continue to maintain pre-pandemic levels of bus service in the City as required by the 1973 Agreement, as amended.

Section 5. That eliminating competitive bidding in connection with the City's transfer of the Real Property is in the best interest of the City because the City desires to provide the Real Property as required by the 1973 City-SORTA Agreement and further SORTA's use of the Real Property shall allow for the providing of bus service in the City to benefit the citizens of the City.

Section 6. That any transfer of the sum provided for in this ordinance and transfer of the Real Property and assets shall not be made until SORTA and the City execute the Amendment, which shall address the transfer of funds, the transfer of the Real Property and assets, and also SORTA's promise to continue to operate bus service in the City at or above agreed upon minimum service levels, which agreement shall be in substantially the form of the draft Amendment attached hereto as Attachment A.

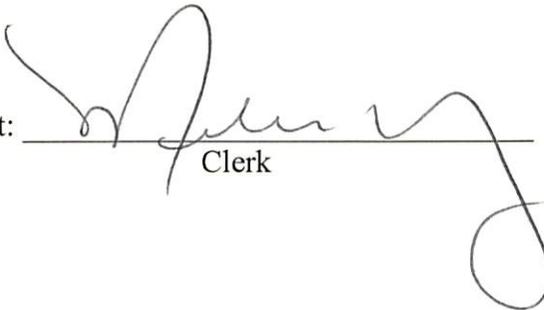
Section 7. That the City Manager is authorized to complete an initial reconciliation of the Transit Income Tax Fund 759 upon expiration of the Transit Income Tax in October 2020 to determine tax liabilities and exposures and report to Council the amounts in Fund 759 for purposes of complying with the Amendment. The initial reconciliation shall identify the amount available to be transferred to SORTA taking into account the City's existing obligations from Fund 759.

Section 8. That the City Manager is authorized to accept funds from SORTA that are held in SORTA's escrowed income tax contingency reserve and deposit those funds into the Transit Income Tax Fund 759 to pay amounts necessary from that Fund.

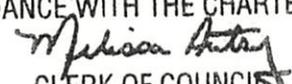
Section 9. That the City Manager and other City officials are hereby authorized to take all necessary and proper actions to carry out the provisions of this ordinance and the Amendment, including, without limitation, executing any and all other ancillary agreements, plats, deeds, easement agreements, affidavits, closing statements, and other documents.

Section 10. 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 the immediate need to transfer the Real Property to SORTA as soon as possible to allow for the execution of the Amendment described in this ordinance and to allow the corresponding benefits to the City and SORTA to begin at the earliest possible time.

Passed: August 5, 2020

Attest:   
Clerk

  
John Cranley, Mayor

I HEREBY CERTIFY THAT ORDINANCE NO 247-2020  
WAS PUBLISHED IN THE CITY BULLETIN  
IN ACCORDANCE WITH THE CHARTER ON 8-18-2020  
  
CLERK OF COUNCIL