

EMERGENCY

City of Cincinnati

AWB

An Ordinance No. 264

-2021

PROVIDING FOR THE ISSUANCE, SALE AND DELIVERY OF NOT TO EXCEED \$2,975,000 OF ECONOMIC DEVELOPMENT REVENUE BONDS (WALWORTH JUNCTION PROJECT) OF THE CITY OF CINCINNATI, COUNTY OF HAMILTON, STATE OF OHIO, FOR THE PURPOSE OF PROVIDING A PLEDGE OF AND LIEN ON CERTAIN NON-TAX REVENUES AND FUNDS TO SECURE SUCH BONDS; AUTHORIZING NECESSARY DOCUMENTS TO SECURE SUCH BONDS; AND DECLARING AN EMERGENCY.

WHEREAS, the City and East End Development LLC (“Developer”) are parties to that certain Property Sale and Development Agreement dated April 1, 2020, pursuant to which the City conveyed certain real property south of Columbia Parkway at the then-existing terminus of Walworth Avenue in the East End neighborhood of Cincinnati for consolidation with Developer’s abutting property (collectively, the “Project Site”); and

WHEREAS, Developer has commenced the process of redeveloping the Project Site into a housing subdivision intended to include 39 single-family homes (the “Private Project”); and

WHEREAS, in order to support construction and habitation of the Private Project, Developer has undertaken environmental remediation and construction of various public improvements within the Project Site, including utility infrastructure, an extension of Walworth Avenue, and related improvements in support of the Private Project (the “Public Infrastructure Project”); and

WHEREAS, on December 18, 2019, this Council passed Ordinance No. 540-2019 (the “TIF Ordinance”) declaring improvements (as defined in Ohio Revised Code (“ORC”) Section 5709.40) to certain parcels of real property within the Project Site to be a public purpose and exempt from real property taxation (the “TIF Exemption”); and

WHEREAS, pursuant to the TIF Ordinance, the current and future owners of the portion of the Project Site subject to the TIF Exemption are required to make service payments in lieu of taxes in an amount equal to the amount of real property taxes that would have been paid had the TIF Exemption not been granted (the “Service Payments”); and

WHEREAS, pursuant to Resolution No. 23-2021 passed by this Council on March 17, 2021, and Ordinance Nos. 101-2021 and 103-2021 passed by this Council on March 31, 2021 (collectively, the “Assessment Legislation”), the City has levied special assessments pursuant to ORC Chapter 727 (the “Assessment”) against a portion of the Project Site (the “Assessed Property”); and

WHEREAS, this Council has approved a form of Development Agreement (the “Development Agreement”) between the City and Developer pursuant to which the City shall agree to cooperate with the Port of Greater Cincinnati Development Authority (the “Port Authority”) in connection with the issuance of bonds of the Port Authority (the “Port Bonds”) to finance a portion of the costs of the Public Infrastructure Project; and

WHEREAS, the Port Bonds shall be secured by, among other things, a pledge by the City of the Service Payments, the revenue generated by the Assessment (the “Assessment Revenue”), and individual guaranties as further described in the Development Agreement (the “Guaranties” and each a “Guaranty”); and

WHEREAS, in order to minimize the interest rate applicable to a portion of the Port Bonds in a principal amount not to exceed \$2,975,000 (the “NTR-Secured Port Bonds”), this Council has determined to pledge certain non-tax revenues of the City towards the repayment of such NTR-Secured Port Bonds; and

WHEREAS, this Council by this ordinance authorizes the issuance of economic development revenue bonds of the City (the “Bonds”) to provide for and evidence the pledge of the City’s aforesaid non-tax revenues and special funds in order to secure the repayment of the NTR-Secured Port Bonds in accordance with the terms and provisions of this ordinance and a cooperative agreement to be entered into among the City, Developer, the Port Authority, and any additional necessary parties; provided that the City shall receive a credit against its obligation under the City Bonds for each payment made towards such obligation from Service Payments, Assessment Revenue, or Guaranty receipts; 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, and the Indenture (as hereinafter defined), if any, the following words shall have the indicated meanings:

“Additional Bonds” shall have the meaning set forth in the Indenture.

“Assessment” means the levying of special assessments by the City pursuant to Ohio Revised Code Chapter 727, Resolution No. 23-2021 passed by this Council on March 17, 2021, and Ordinance Nos. 101-2021 and 103-2021 passed by this Council on March 31, 2021.

“Assessment Revenues” means the revenues generated by the Assessment and received by the City.

“Authorized Officer” means any officer, member or employee of the Issuer authorized by a certificate of the Executive to perform the act or sign the document in question, and if there is no such authorization, means the Executive.

“Bond” or “Bonds” means the Issuer’s not to exceed \$2,975,000 Economic Development Revenue Bonds (Walworth Junction Project), to be issued in a manner determined by the Fiscal Officer.

“Bond Fund” shall have the meaning set forth in the Indenture.

“Bondholder,” “Holder,” “holder of Bonds,” “owner of Bonds” or any similar term means the Port Authority, or the Port Authority’s successors and assigns as are registered on the Bond Register.

“Bond Legislation” means this Ordinance.

“Bond Register” means the records for the registration and transfer of Bonds maintained by the institution appointed as registrar and paying agent pursuant to the Fiscal Officer’s Certificate or by the Trustee as Bond registrar pursuant to the Indenture.

“Bond Service Charges” means the principal, interest and any premium required to be paid on any Bonds.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Developer” means East End Development LLC.

“Development Agreement” means the Development Agreement, the form of which has been authorized by this Council, to be entered into by and between the City and Developer pursuant to which, among other things, the City and Developer shall cooperatively facilitate issuance of bonds by the Port Authority to finance a portion of the costs of the Public Infrastructure Project.

“Executive” means the City Manager or any Assistant City Manager of the Issuer.

“Fiscal Officer” means the Director of Finance, as Fiscal Officer of the Issuer.

“Fiscal Officer’s Certificate” means the certificate executed by the Fiscal Officer setting forth any terms relating to the issuance of the Bonds which are not specified in this Bond Legislation.

“Guaranties” or a “Guaranty” shall mean the personal guaranty or guaranties of the NTR-Secured Port Bonds as further described in the Development Agreement.

“Indenture” means the Trust Agreement dated as of May 1, 1996 between the Issuer and the Trustee, as the same may be amended as provided therein, including by the Supplemental Bond Indenture.

“Interest Payment Date” or “interest payment date” means, as to the Bonds, the dates designated as such in the Indenture or the Fiscal Officer’s Certificate.

“Issuer” means the City of Cincinnati, Hamilton County, Ohio.

“Issuing Authority” means the City Council of the Issuer.

“NTR-Secured Port Bonds” means the Port Authority’s Special Assessment Development Revenue Bonds, Series 2021A-1 (Walworth Junction Development Project), which NTR-Secured Port Bonds shall be secured by a pledge of the Special Funds as evidenced by the Bonds.

“Outstanding Bonds” or “Bonds outstanding” or “outstanding” as applied to Bonds, means, as of the applicable date, all Bonds which have been authenticated and delivered, or are then being delivered, by the Issuer pursuant to this Bond Legislation and the Fiscal Officer’s Certificate or by the Trustee under the Indenture, as applicable, except:

(a) Bonds cancelled on surrender, exchange or transfer or cancelled because of payment at or prior to such date;

(b) Bonds for the payment, redemption or purchase for cancellation of which sufficient monies have been deposited and credited for the purpose on or prior to that date in the Bond Fund, or other Special Fund or account or with the Trustee or Paying Agent (whether upon or prior to the maturity of those Bonds); and provided that if any of those Bonds are to be purchased for cancellation a firm offer for sale stating the price shall have been received and accepted;

(c) Bonds which are deemed to have been paid pursuant to the provisions of the Indenture or any Bonds which are deemed to have been paid pursuant to the provisions of this Bond Legislation and the Fiscal Officer’s Certificate; and

(d) Bonds in lieu of which others have been authenticated under the Indenture or this Bond Legislation and the Fiscal Officer’s Certificate.

“Paying Agent” means the Trustee or its lawful successor, or the registrar and paying agent appointed pursuant to the Fiscal Officer’s Certificate, as applicable, which may be the Fiscal Officer acting as the Paying Agent.

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

“Port Authority” means the Port of Greater Cincinnati Development Authority.

“Private Project” means the redevelopment of the Project Site into a housing subdivision intended to include 39 single-family homes.

“Project Site” shall have the meaning set forth in the Development Agreement.

“Public Infrastructure Project” means environmental remediation and construction of various public improvements within the Project Site, including utility infrastructure, an extension of Walworth Avenue, and related improvements in support of the Private Project.

“Service Payments” means the service payments in lieu of taxes payable by the current and future owners of the portion of the Project Site subject to the TIF Exemption pursuant to the TIF Ordinance.

“Special Funds” means (i) all revenues received by the Issuer under the revenue items designated as Fines, Forfeitures and Penalties and License and Permit Fees in the annual City appropriation ordinance and (ii) the Dedicated Economic Development Fund (as defined in the Indenture); provided, that the City shall not change the components of such revenue items so as to result in a substantial reduction in amounts recorded under such items.

“State” means the State of Ohio.

“Supplemental Bond Indenture” means the Nineteenth Supplemental Trust Agreement dated as of the first day of the month during which the Bonds are issued, between the Issuer and the Trustee, as the same may be amended as provided therein, providing for the issuance of the Bonds.

“TIF Exemption” means the exemption from real property taxation of improvements (as defined in Ohio Revised Code Section 5709.40) to the portion of the Project Site subject to the TIF Ordinance.

“TIF Ordinance” means Ordinance No. 540-2019 passed by City Council on December 18, 2019.

“Trustee” means the Bank of New York Mellon Trust Company, N.A., and its successors and assigns under the Indenture.

Any reference to the Issuer, the Issuing Authority, or to their members, officers or to other public officers, boards, commissions, departments, institutions, agencies, bodies or entities shall include those which succeed to their functions, duties or responsibilities by operation of law, and also those who at the time may legally act in their place.

References to any act or resolution of the Ohio General Assembly, or to a section, chapter, division, paragraph or other provision of the Ohio Revised Code or the Constitution of Ohio, or the laws of Ohio, shall include that act or resolution, and that section, chapter, division, paragraph or other provision and those laws as from time to time amended, modified, supplemented, revised or superseded, unless expressly stated to the contrary, provided that no such amendment, modification, supplementation, revision or supersession shall alter the obligation to pay the Bond Service Charges on Bonds outstanding, at the time of any such action, in the amount and manner, at the times and from the sources provided in the Bond Legislation and the Indenture, except as otherwise herein permitted.

Unless the context otherwise indicates, words importing the singular number shall include the plural number and words importing the plural number shall include the singular number. The terms “hereof,” “herein,” “hereby,” “hereto” and “hereunder,” and similar terms, means both the Bond Legislation and the Indenture, except in the case of reference to a stated section number of either.

Section 2. Determinations by Issuing Authority. The Issuing Authority hereby finds and determines that it is necessary to issue, sell and deliver the Bonds in the principal amount of not to

exceed \$2,975,000 upon the terms set forth herein, as supplemented by the Indenture or the Fiscal Officer's Certificate, for the purpose of providing the pledge of the Special Funds to the Port Authority to secure the NTR-Secured Port Bonds; all as allowable by law. The officers specified herein are authorized to execute and deliver the documents necessary or appropriate in order to secure the Bonds.

This Council hereby determines that the issuance of the Bonds will be for a proper public and municipal purpose and in the best interest of the Issuer. This Council hereby authorizes any action not in conflict with this Ordinance and necessary to ensure that all of the requirements to issue Additional Bonds under the Indenture have been satisfied prior to the issuance of the Bonds.

Section 3. Terms of the Bonds.

(a) Form, Denominations and Dates. The Bonds shall be designated "Economic Development Revenue Bonds (Walworth Junction Project)," shall be negotiable instruments, shall be issued only in fully registered form, without coupons, and shall express upon their faces the purpose for which they are issued. The Bonds shall be dated as of their date of issuance, shall be numbered R-1 and upward or as determined by the Bond registrar, and shall be issued in denominations of \$100,000 or any \$5,000 integral multiples in excess thereof or as otherwise provided in the Fiscal Officer's Certificate. The Bonds shall be exchangeable for other Bonds in the manner and upon the terms set forth in the Indenture or the Fiscal Officer's Certificate.

(b) Execution, Interest Rates and Maturities. The Bonds shall be executed by the signatures of the Mayor and Fiscal Officer of the Issuer and shall bear the official seal of the Issuer (provided that both of such signatures and such seal may be facsimiles), and shall bear the manual authenticating signature of an authorized signer of the Bond registrar or the Trustee, as appropriate. The principal of the Bonds shall be payable in installments in the principal amounts and on the dates, and each of the unpaid installments of principal shall bear interest from its initial date of delivery at the rates and shall be payable as to interest, to ensure payment of amounts due in connection with the NTR-Secured Port Bonds, which shall bear interest at a rate not to exceed 6.00%. All NTR-Secured Port Bonds shall finally mature not later than as allowable by law but in any event not later than the maturity of the NTR-Secured Port Bonds.

(c) Optional Redemption. The Bonds shall be subject to optional and mandatory redemption prior to maturity, to the extent and with respect to the corresponding payments of principal and at the applicable redemption premium, when and as the NTR-Secured Port Bonds are subject to prepayment, whether mandatory or optional, in accordance with the NTR-Secured Port Bond provisions. Such redemption provisions will be as set forth in the Indenture or as confirmed in the Fiscal Officer's Certificate. Delivery of notice or prepayment or redemption of the NTR-Secured Port Bonds (other than by mandatory sinking fund redemption) shall, without further notice or action constitute notice of redemption of the corresponding amounts of principal due on the Bonds, and the same shall, thereby, become due and payable on the date of prepayment or redemption of the

NTR-Secured Port Bonds and at a redemption price equal to the redemption or prepayment price payable with respect to the NTR-Secured Port Bonds so redeemed.

(d) Payment. Bond Service Charges with respect to the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Trustee or the Paying Agent, if any, in the manner provided in the Fiscal Officer's Certificate or the Indenture, as applicable; provided that the Issuer shall receive a credit against amounts due on the Bonds on any payment date for the Bonds with respect to the principal of or interest or any premium on such Bonds equal to the amounts paid or credited against payments of the principal of or interest or any premium on the NTR-Secured Port Bonds on such payment date derived from Service Payments, Assessment Revenue, or amounts paid pursuant to the Guaranties.

Section 4. Delivery of the Bonds. The Bonds shall be sold and delivered to or to the credit of the Port Authority as consideration for the receipt of proceeds of the NTR-Secured Port Bonds without further action by this Council, such NTR-Secured Port Bond proceeds to equal the sale price of the NTR-Secured Port Bonds. The Executive or Fiscal Officer is hereby authorized to make arrangements for the delivery of the Bonds to, and deemed payment therefor by or on behalf of, the Port Authority, without a purchase agreement for the Bonds and without further action by this Council, but upon the terms of the NTR-Secured Port Bonds.

Section 5. Allocation of Proceeds of the Bonds. There will be no proceeds received by the Issuer from the sale of the Bonds other than proceeds of the sale of the NTR-Secured Port Bonds, which shall be allocated, and are hereby appropriated, in the amounts, and to the funds, set forth in the Fiscal Officer's Certificate, the Indenture or the indenture securing the NTR-Secured Port Bonds, as applicable.

Section 6. Security for the Bonds. The Bonds, and as a result the NTR-Secured Port Bonds, shall be secured by a pledge of the Special Funds. Anything in the Indenture, the Bond Legislation or the Bonds notwithstanding, neither the Indenture, the Bond Legislation, the Bonds, nor the NTR-Secured Port Bonds will constitute a debt, or a pledge of the faith, credit or taxing power of the Issuer, the State or any political subdivision thereof, and the holders or owners of the Bonds and the NTR-Secured Port Bonds shall have no right to have taxes levied by the Issuing Authority, the General Assembly of the State, or the taxing authority of any political subdivision of the State for the payment of the Bond Service Charges or the debt service on the NTR-Secured Port Bonds, and the Bonds and the NTR-Secured Port Bonds shall contain on their faces a statement to that effect. Nothing herein shall be deemed to prohibit the City from lawfully using, of its own volition, any of its general resources for the fulfillment of any of the terms and conditions of the Indenture, the Bond Legislation, or the Bonds; provided, that no moneys raised by taxation are obligated or pledged therefor. The NTR-Secured Port Bonds shall also be secured by the Service Payments, the Assessment Revenues, and the Guaranties and the Issuer covenants with the holders of the NTR-Secured Port Bonds that the Issuer shall not use or otherwise encumber the Service Payments or the Assessment Revenues, other than on a subordinate basis, for any other purpose while the NTR-Secured Port Bonds are outstanding.

Section 7. Additional Provisions of the Indenture. The Executive and the Fiscal Officer are hereby authorized to make provision in the Indenture securing such Bonds for: the application of the Special Funds; creation of such funds as are necessary or appropriate; investment of moneys in such funds; use of such funds; recordkeeping; such covenants of the Issuer as are necessary or appropriate; and such other matters as are customary or appropriate to be contained in the Indenture.

Section 8. Execution of the Indenture and Other Documents. The Executive and the Fiscal Officer are each hereby authorized to execute, acknowledge and deliver, on behalf of the Issuer, to the Trustee the Supplemental Bond Indenture consistent with the purposes of this ordinance and the Development Agreement, which consistency shall be conclusively evidenced by the execution of the Supplemental Bond Indenture.

The Fiscal Officer is hereby authorized to exercise her discretion in order to set the terms contained in the Fiscal Officer's Certificate and to execute and deliver the same, all within the parameters set by this Bond Legislation.

The Executive and the Fiscal Officer are each hereby separately authorized to take any and all actions and to execute such other instruments that may be necessary or appropriate in the opinion of nationally recognized bond counsel, in order to effect the issuance of the Bonds, the issuance of the NTR-Secured Port Bonds and the intent of the Bond Legislation. The Fiscal Officer, or other appropriate officer of the Issuer, shall certify a true transcript of all proceedings had with respect to the issuance of the Bonds, along with such information from the records of the Issuer as is necessary to determine the regularity and validity of the issuance of the Bonds.

This Bond Legislation shall constitute a part of the Indenture as therein provided and for all purposes of the Indenture, including, without limitation, application to the Bond Legislation of the provisions in the Indenture relating to amendment, modification and supplementation, and provisions for severability.

The Fiscal Officer is hereby authorized to appoint a trustee, paying agent and registrar for the Bonds.

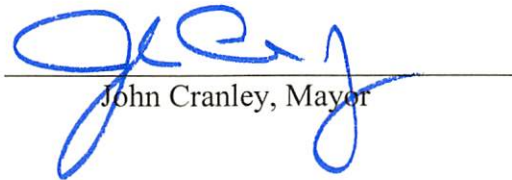
Section 9. Severability. Should it be judicially determined by a court having jurisdiction to pass upon the validity of the Bond Legislation, the Indenture or the Bonds, that any provision of the Bond Legislation is beyond the powers of the Issuing Authority or the Issuer, or is otherwise invalid, then such decision shall in no way affect the validity of the Bond Legislation, the Indenture or the Bonds, or any proceedings related thereto, except as to the particular matters found by such decision to be invalid.

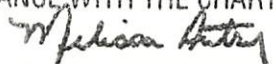
Section 10. Open Meetings Determination. The Issuing Authority hereby finds and determines that all formal actions relative to the adoption of this Bond Legislation were taken in an open meeting of this Issuing Authority, and that all deliberations of this Issuing Authority and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 11. Effective Date. That this ordinance is 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 necessity for authorization of the Bonds to provide security for the NTR-Secured Port Bonds, which is needed to provide adequate funds at the earliest possible time so that the Issuer may meet its commitment to Developer to assist in the financing of the construction of the Public Infrastructure Project to support the Private Project and increase housing opportunities within the City.

Passed: JUNE 23, 2021

Attest: 
Clerk


John Cranley, Mayor

I HEREBY CERTIFY THAT ORDINANCE NO 206 2021
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 7.6 2021

CLERK OF COUNCIL